

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

WRIT PETITION NO.10574 OF 2017

Smt.Aaditi Ajay Shelar
Residing A/P. Plot No.97,
Koyana Sanmitra Housing Society,
Golibar Maidan, Godoli,
Satara .. Petitioner

Vs.

1. Maharshi Karve Stree-Shikshan Sanstha
Through its Chairman and Secretary
having its office at Karve Nagar
Pune – 400 052 ..

2. Kanya Shala,
Through its Head Mistress
An Educational Institution established
and run by Respondent No.1 situate
at 155, A/B, Bhavani Peth,
Satara – 415 002 ..

3. The Education Officer (Secondary)
Zilla Parishad, through
Office of the Government Pleader
(Appellate Side) PWD Building,
High Court, Fort,
Mumbai – 400 001 .. Respondents

Mr.S.C. Naidu I/b C.R.Naidu & Co. for the petitioner.

Mr.Kiran Bapat I/b Mr.Sandeep R. Waghmare for the respondent No.1.

Ms. Vaishali Nimbalkar AGP for the State.

CORAM : A.K. MENON, J.

RESERVED ON : 11TH APRIL, 2018,

PROUNOUNCED ON : 17TH JULY, 2018.

JUDGMENT :

1. By this writ petition, the petitioner challenges the order dated 3rd May, 2017 passed by the School Tribunal, Kolhapur in Appeal No.42 of 2016 whereby the petitioner's Appeal under Section 9 of the Maharashtra Employees of Private School Act, 1977 (MEPS) came to be partly allowed rejecting the prayer for reinstatement but granting some compensation instead as also preferential right to the post when there is permanent vacancy for selection process.

2. A few facts are required to be narrated before dealing with the rival contentions. The petitioner is qualified with Master's degree in Arts and Bachelor Degree in Education (M.A. B.Ed). She is eligible to be a secondary level teacher. Respondent no.1 is a public trust which manages respondent no.2 – a secondary school. Respondent No.3 is the Education Officer, who is the Sanctioning authority, who has control over the Secondary School.

3. It is petitioner's contention that in response to an advertisement issued by respondent no.2 - trust in respect of one of the Education institutions run and managed by respondent no.2, the petitioner had applied and was called for interview on 21st June, 2008/22nd June, 2008. She was declared successful and was asked to meet the Head Mistress of respondent no.2 school which she did. She was asked to join duties on 27th June, 2008 as Shikshan Sevak. It is the case of the petitioner that on 25th August, 2008, respondent no.1 sent a proposal for approval of the petitioner's appointment to respondent no.3. She contends that her appointment was approved on or about 15th October, 2008 as a "Part Time Shikshan Sevak" at a monthly emolument of Rs.2,000/- for three calendar years from 27th June 2008 to 26th June 2011.

4. According to the petitioner, the Head Mistress of respondent no.2 had proposed to engage the petitioner for teaching at Shree Nagai Devi Vidyalay, Koparde which proposal was approved by respondent no.3 on 6th September, 2012. The petitioner has relied upon a copy of the said communication. It is contended by the petitioner that on or about 22nd March, 2012, respondent no.1 - trust informed the petitioner that she was appointed as Part Time Shikshan Sevak and she would be relieved from the said post with effect from 30th April, 2012. According to the petitioner, she continued to be full time teacher teaching the subject of Hindi, History,

Geography and Home Science in the secondary section of respondent no.2 – school. Thus, though approval was sought and granted for engaging the petitioner at Shree Nagai Devi Vidyalay she continued to teach in respondent no.2 – school on full time basis even though she was required to be part time Shikshan Sevak. She contended that she has been taking 30 to 35 classes on full time basis and had worked continuously for three calendar years from 27th June, 2008 to 26th June 2011 and thereafter from 27th June, 2011 to 30th April, 2012. It is contended that vide letter dated 25th March 2012 the petitioner was informed that on account of the State Government not approving her appointment, her services would be terminated from 30th April, 2014.

5. Meanwhile the Head Mistress of respondent no.2 allegedly informed the petitioner that she should continue to work as full time teacher for the unaided section which she continued to do for respondent no.2 – school with a technical break from 1st November, 2013 to 17th November, 2013 and breaks during the Summer vacation 2014 and a further break from 19th October, 2014 to 4th November, 2015. She also relies upon an experience certificate issued by respondent no.2.

6. The petitioner is aggrieved by the fact that while she was working with respondent no.2, they appointed four other persons as Shikshan Sevaks

as detailed under :

Sr.No.	Name	Rooster Pt.	Period of Shikshan Sevak	On Regular Scale	Education Officers order
1	Smt. Rajopadhy	Open	14-07-2009 to 13-07-09	14-07-2012	31-10-2012
2	Smt.Maskar	Open	15-06-2010 to 14-06-2013	15-06-2013	31-10-2012
3	Smt.Sanas	Open	25-06-2011 to 24-06-2014	25-06-2014	08-12-2014
4	Smt.Dhone	Open	15-06-2010 to 14-06-2013	30-06-2013	17-10-2013

These appointments were stated to be approved by the respondent no.3, who sent five teachers who were surplus in other institutes to join respondent no.2. These teachers are stated to have joined on 1st January, 2015 and on 2nd February, 2015. The petitioner was asked not to sign muster roll or attend classes for teaching with effect from 2nd February, 2015. The petitioner apparently made several requests on 3rd February 2015, 26th February 2015, 16th March 2015, 8th April 2015, 15th June 2015, 8th July 2015 and 5th August, 2015 seeking permission to continue to work but she did not receive any reply. As a result the petitioner challenged her oral termination by filing an appeal on or about 5th September, 2015. The delay in filing an application was condoned and the appeal was

thereafter taken up for hearing but was decided against her.

7. Mr.Naidu, learned counsel appearing on behalf of the petitioner submitted that the impugned order is bad in law inasmuch as the Presiding Officer had decided the matter without calling for roster to ascertain correctness of the petitioner's contention. He submitted that the Presiding Officer has misinterpreted the decision of this Court in *Shikshan Prasarak Mandal Wani vs. Presiding Officer, School Tribunal Amravati 2005 (4) Mh.L.J. 485 (Bombay)* and the *Maharashtra Shikshan Sanstha vs. Presiding Officer, School Tribunal 2006 (7) Mh.L.J. 11* and *Vaidya Bharati Shah vs. The State of Maharashtra and Ors.* He submitted that the School Tribunal had ignored the fact that the Education Officer had approved the appointment of the petitioner as per MEPS Act and Rules and relevant directives and the her appointment was made in an open category but on a probationary basis and she had not completed the period of probation, therefore, she was not appointed on a permanent post. It is contended that the School Tribunal had erroneously held that if the appointment was not in open category it would have to be on permanent basis. In other words, it would have to be an appointment on the post reserved for backward class. It was urged that this finding was ultra vires the MEPS Act and Rules.

8. In support of his contention Mr.Naidu relied upon the following

judgments :

- (i) Nishad Sadashiv Pawar & Ors. vs. Dnyanasadhana College (through Honorary General Secretary) & Ors. 2005 (4) ALL MR 101;*
- (ii) Dadasaheb Govindrao Shinde vs. State of Maharashtra & Ors. 2016 (5) Mh.L.J. 480;*
- (iii) Gajanan vs. State of Maharashtra & Ors. 2016(5) Mh.L.J. 550;*
- (iv) Sushil vs. State of Maharashtra 2016(5) Mh.L.J. 723;*
- (v) Uddhav Trimbak Umbare vs. The State of Maharashtra & Ors. Writ Petition No.9398 of 2012 dt. 1.2.2013;*
- (vi) Nagpur Shikshan Mandal & Anr. vs. Varsha Vinod Sayam & Anr. 2014(5) Mh.L.J. 550;*
- (vii) Ra, Avadh Mahel Pal vs. Shivdutta Educational Trust & Ors. 2007(6) Mh.L.J. 659;*
- (viii) Secretary, Rayat Education Society vs. Uddhav Trimbak Umbare & Ors. SLP (Civil) No..CC 12716/2013.*

9. On behalf of the petitioner Mr.Naidu, learned counsel relied upon the order of the Division Bench of this Court in case of Uddhav Trimbak Umbare (supra) in which two Government Resolutions dated 31st January, 2001 and second dated 10th January, 2005 were dealt with. A fair translation of the resolutions is reproduced as follows :

“5. The petitioner relies on Government Resolutions dated

31st January, 2001 and 10th January, 2005 which translated, read as under:

G.R. dated 31st January, 2001.

“The issue of appointing the Part Time Teacher working at Junior College level as Full Time Teacher if the full time post becomes available, was under consideration of the Govt. Now, subject to the conditions mentioned hereunder, the Part time teacher working in the post should be appointed as full time teacher if the post of full time teacher is created due to increase in work load.

(1) While working under one Management if the full time post is created in the same management, then observing the principles of need of subjects and reservation for backward classes, the “Part Time Teacher” working in that Post should be appointed as “Full Time Teacher”.

(2) If the newly created post in the Management is reserved as per reservation and the Part Time teacher is from open category, he cannot be upgraded to the post of full time teacher. However, if the part time teacher is from category as per reservation, he can be appointed in the post of full time teacher.

(3) The part time teacher who has been appointed

by the Management in the Govt. recognized pay scale and has obtained salary with Govt. approval in the year 19992000, such part time teacher will be entitled to receive pay scale of full time teacher from the date of appointment in the post of full time teacher."

G.R. dated 10th June, 2005.

"(9) If the teacher working on part time teacher gets the work load of full time teacher and if he is complying with the other terms and conditions applicable to that post, in such cases he should be given appointment as Shikshan Sevak. However, while giving such appointment and while granting approval to the same, it would be necessary to implement the reservation policy for the backward classes. If the part time teacher is to be appointed as Shikshan Sevak, the service rendered by him as part time Shikshan Sevak should be counted as half (Six months) for Shikshan Sevak.

Thereafter if he complies with the prevailing terms and conditions, he should be appointed in regular pay scale. If the part time Shikshan Sevak has worked as part time Shikshan Sevak for 6 years and if he is to be given appointment in the post of full time teacher, he

should not be given appointment as Shikshan Sevak but he should be given appointment in regular pay scale subject to compliance of the prevailing terms and conditions."

10. He submitted that resolution dated 10th January, 2005 has no application in the instant case. That even a part time teacher is to be appointed as Shikshan Sevak. The services rendered by her as part time Shikshan Sevak should be counted as half (six months) for Shikshan Sevak. Thereafter if a teacher complies with the prevailing terms and conditions, he/she should be appointed in regular pay scale whereas if a part time Shikshan Sevak has worked as a part time Shikshan Sevak for six years and if a teacher is given appointment in the post of full time teacher, he should not be given appointment as Shikshan Sevak on regular pay scale subject to compliance of the prevailing terms and conditions.

11. According to Mr.Naidu the Division Bench of this Court in the case of Nishad Sadashiv Pawar & Ors. (supra) held that the Government Resolution issued from time to time in exercise of its administrative powers would be inapplicable to appointments in schools and junior colleges. The Division Bench followed the decision of the Supreme Court in Nanjundappa R.N. Vs. Themmiiah T. (1972) 1 SCC 409. The Division Bench of this Court held that Government Resolution is nothing but administrative instructions which will be applicable, if there is no primary or secondary legislation in force. In the

instant case under the MEPS Act, rules framed thereunder would apply. The issue is whether Government Resolutions will prevail over the rules. The rule making power is subject to Legislative control and while rules are subordinate legislation Administrative instructions are not.

12. In yet another case *Dadasaheb Shinde (supra)* the Division Bench of this Court held that the petitioner in that case has been appointed from the S.T. category and nothing was brought on record to counter the claim of the petitioner. The Court held that if appointments were made prior to Government Resolution in that case (GR dated 2nd May, 2007) the said Government Resolution would not apply to the said case.

13. The other two judgments referred by Mr.Naidu in *Dadasaheb's case* are *Sushil Rangnath Waghmare (supra)* and *Gajanan Valmik Chavan (supra)*. The fact situation reveals that the petitioner was appointed in the year 2011 after following due procedure so as to fill up the backlog of the posts from reserved category. After taking into consideration the relevant GRs, this Court in the aforesaid case reached the conclusion that if the appointments are made prior to issuance of the GR dated 2nd May, 2012, the GR would not apply to such cases. The Government of Maharashtra imposed a ban on recruitment with effect from 2nd May, 2012. The petitioner's appointment was made when there were no vacancies.

14. Mr.Naidu also made reference to the following communications :

- (a) Letter dated 11th August, 2011 from respondent no.2 to respondent no.3;
- (b) Letter dated 11th August, 2008 from respondent no.3 to respondent no.2;
- (c) Letter dated 14th March, 2012 from respondent no.2 to respondent no.3;
- (d) Letter dated 21st April, 2012 from respondent no.3 to respondent no.2;
- (e) Letter dated 27th December, 2012 from respondent no.2 to respondent no.3;
- (f) Letter dated 5th November, 2011 from respondent no.3 to respondent no.2;

15. It was urged that Government Resolutions issued from time to time were to be treated as being issued in exercise of Administrative Powers under Article 162 of the Constitution and would be inapplicable to appointments to the School and Junior Colleges. That apart he submitted that the petitioner had already completed seven years of service as evident from the record. Mr.Naidu therefore submitted that the impugned order be set aside.

16. On behalf of respondent no.1, the Secretary of Respondent No.1 has filed an affidavit in which it was contended that respondent no.1 society was dedicated to welfare of women. The appointment of the petitioner in respondent no.2 school as a part time Shikshan Sevak post in the Secondary Division has been admitted to the extent it concerns academic year 2008-2009, 2009-2010 and 2010-2011. It is contended that the appointment

was temporary and respondent no.2 was an aided school in which the petitioner did not complete her probation period while serving as a part time teacher as contemplated in Government Resolution dated 10th June, 2015. It is also admitted that the petitioner was appointed as a part time Shikshan Sevak for the year 2011-12 but her services were terminated by serving one month's advance notice.

17. By virtue of Government Resolution dated 10th June, 2005 the petitioner cannot claim to be permanent employee in the school. She was not in service during the year 2012-13 and yet made no grievance. The contention is that between the period 1st August, 2013 and 30th October, 2013 and from 18th November, 2013 to 30th April, 2014, similarly from 1st July, 2014 to 18th October, 2014 and from 5th November, 2014 to 31st January, 2015 no grievance was made and she worked in the school for the aforesaid period. The petitioner was apparently relieved from duty on 31st January, 2015 yet no grievance was made at the material time. In the respect of the numerous letters said to be addressed by the petitioner to the respondent and to which I have made reference, it is contended that no such letters were received from the petitioner. It is contended that the respondent school published a notice inviting applications for the post of teaching and non-teaching staff which was subject to approval of the State Government and the applications were submitted before 23rd May, 2015. The petitioner

is said to have applied in response to said advertisement making it clear that she wished to participate in a fresh appointment process. This fact is sought to be used in support of the contention of respondent no.1 that the petitioner did not complete probation period of six years as a part time Shikshan Sevak or three years as a full time Shikshan Sevak. The ad hoc appointment has been given only for the relevant academic year which was accepted by the petitioner and such appointment came to an end on completion of the time mentioned in the letter. However, this letter has not been produced.

18. The deponent of the affidavit supports the impugned order and reiterates that the appointment of the petitioner was only as a part time Shikshan Sevak for the period 27th June, 2008 to 26th June, 2011. That the School Education and Sports Department of Government of Maharashtra vide Government Resolution dated 10th June, 2005 prescribed guidelines for appointment of Shikshan Sevak which required the Competent Authority to grant approval to the Shikshan Sevak for a period of three years. It is submitted that no such approval was granted. The deponent states that during 26th June, 2011 to 30th April, 2012 the petitioner was working with respondent no.2 as a part time Shikshan Sevak for which the approval was granted on 6th September, 2012. However, the said order contains a typographical error inasmuch as it incorrectly shows that the petitioner was working at Shree Nagai Devi Vidyalay, Korpade, Satara, which school is

neither run nor managed by respondent no.1. The deponent reiterates that till 30th April, 2012 the petitioner was working as part time Shikshan Sevak and work load was also of Part Time Shikshan Sevak. The respondent contends that even in the appeal before the school Tribunal she did not contend that she worked as full time Shikshan Sevak at the relevant time. This is merely an after thought. It is alleged that the petitioner has made a false and misleading statement to the effect that she has worked from 27th June, 2008 to 31st January, 2015 as a part time Shikshan Sevak.

19. According to the deponent, the services of the petitioner were terminated in accordance with the letter dated 25th March, 2014 that in view of the Government Resolution dated 2nd May, 2012 the Education Officer was expected to send surplus teachers to respondent no.2 – school in view of percentage of attendance being higher at the material time. However, during 2012-13 the surplus teachers were not sent, as a result student – teacher ratio suffered. In the academic year 2013-14, to avoid inconvenience to the studies of students, respondent no.1 decided to appoint some teachers including the petitioner, who was appointed on 1st August, 2013. She worked only between 1st July, 2014 and 18th October, 2014 with a break from 19th October, 2014 to 4th November, 2014 but continued to work from 5th November, 2014 to 31st January, 2015. The deponent further states that as desired by respondent no.3 five teachers were absorbed in

respondent no.2 – school and in view of the said appointment there was no need to continue with the services of the petitioner and therefore he was relieved of her duties from 2nd February, 2015. The deponent states that the petitioner was always aware of the fact that she would be relieved of services on 2nd February, 2015. It is however admitted that the petitioner worked for some time in the unaided division and salary was paid by respondent no.1 to all four teachers who had joined pursuant to Government Resolution dated 10th June, 2005 who were appointed as regular teachers after they satisfied criteria of completing probation period of three years as full time Shikshan Sevak. The deponent seeks to justify the action of the State Government since according to him if five teachers had not been absorbed the Government would have to continue to pay salary even if they did not work since they were permanent employees and thereby causing loss to the exchequer.

20. Apropos the letters said to have been written by the petitioner to the respondent – school the said contention is met with absolute denial and it is contended that the letters were fabricated. On this basis respondent no.1 has supported the impugned order.

21. On behalf of respondent no.3 one Ramesh Uddhav Chavan has filed an affidavit wherein it is contended that the petitioner was appointed on 27th June, 2008 as per proposal given by the management. The approval was

granted on 15th October, 2008 for the period 27th June, 2008 to 26th June, 2011 and thereafter vide order dated 6th September, 2012 from 27th June, 2011 to 30th April, 2012. It is contended that the petitioner has never completed the probation period to be appointed as a permanent employee since she was serving as a part time teacher as contemplated in Government Resolution dated 10th June, 2005. It is further stated that on account of Government Resolution dated 2nd May, 2012 no new staff could be appointed unless all teachers declared surplus are absorbed in their schools. That the Government Resolution dated 23rd June, 2017 the Education institutions were required to inform to respondent no.3 of the vacant posts, subjects, qualifications and categories in which there were vacancies and accordingly this case as well necessary compliance was required. The learned AGP therefore submitted that the contentions in the affidavit of Mr. Ramesh Uddhav Chavan are proper and the impugned order was correct and the petition deserves to be dismissed.

22. Having heard learned counsel for the parties, in the narration of facts in the impugned order, it is recorded that the petitioner had completed her probation period and had secured status of permanent employee. Under Section 4(6) of the Act and Rules she was entitled to be appointed on a permanent post and that she was officially appointed as a part time teacher

vide order dated 27th June, 2008 and that after completion of three years as a part time teacher a candidate was liable to be appointed on a regular post. More so, since she was working since 2008. In the meantime the petitioner had continued to work for about 5 years as part time Shikshan Sevak and for two years as full time teacher. According to the petitioner, therefore, she had completed her probation period and was entitled to be confirmed.

23. On the other hand, the respondent contended that she was appointed as part time Shikshan Sevak on a purely temporary basis and was continued on year to year basis. She did not complete her probation, however, the respondent had published an advertisement for the post of full time Shikshan Sevak in which the petitioner had also applied and therefore, she is not entitled to claim a permanent post. Respondent No.4 was the Education Officer who was absent and therefore appeal proceeded exparte. Issues were framed, all of which were answered in the negative, holding that the petitioner had

- (i) failed to establish that she was deemed to be a permanent employee,
- (ii) that her termination of service was illegal and
- (iii) that she was appointed on clear permanent and vacant post after following due process of law.

24. In support of the petitioner's case photocopies of the order of termination dated 2nd May, 2015, the approval for years 2008 to 2011 and 2011-12, appointment order and caste certificates were submitted. The

factual findings are that she was appointed as a Shikshan Sevak on part time basis and was appointed as a fresh candidate in an unaided school as full time teacher. The fact that the petitioner was Shikshan Sevak for three years between 27th June, 2008 and 26th June, 2011 is admitted but it was found that the appointment was not made after following due process.

25. It was held that no advertisement has been published in the newspaper and therefore there was no regular selection process. It was further observed by the Tribunal that appointment made in the open category was not established by referring to the roster and the approval does not show that the appointment was made on probation. It was admitted before the Tribunal that the appointment was made for four consecutive years and the services were approved by the department from time to time. Undoubtedly, the department had approved her appointment. Reference was repeatedly made to various judgments cited and in paragraph 22, the impugned order sets out that the petitioner was part timer appointed in the aided section and that the provisions of Section 5(1) did not make any distinction between part time and full time permanent vacancy. No prior permission has been obtained to fill up part time post. In the advertisement produced at Exhibit-4/3, nothing has been mentioned about category of the post and therefore advertisement was invalid. It was found that the appointment was not initially on probation basis as in the appointment of the open category it could have been made permanent but not so in the instant case. Hence the

petitioner is not entitled for any relief as part time Shikshan Sevak.

26. Although initially the appointment was approved by the Education Officer it was not for the probationary period. Hence it was not established that the appointment was on permanent basis and therefore the petitioner is not entitled to be reinstated. It was observed that the petitioner was appointed in an unaided branch, afresh, from 1st August, 2013, i.e. after gap of one year. The document establishes that there was a gap in service and for that appointment no regular selection process or advertisement was published. The fresh appointment in unaided section was made from 31st January, 2015 and her appointment was believed to have been invalid in view of a ban imposed on new recruitment with effect from 2nd May, 2012 with intention to absorbing surplus teachers.

27. The Court observed that the ban on recruitment did not apply to the Scheduled Caste category and that the appointment from the reserved category is exempted from ban. The petitioner being from open category was not exempted from ban. The Court concluded that the post being an unaided one, the proposal of the appointment of the petitioner sent by the Management to the Education department was purportedly not filed on record and there are laches on the part of the Management as well as the petitioner. In the meanwhile surplus teachers were absorbed in the school.

28. Furthermore, in the instant case mandatory advertisement had apparently not been issued and roster had not been filed therefore

appointment of the petitioner could not be ascertained. It was further observed that respondent no.3 had remained silent in the aspect of advertisement since that was very first step in the process of appointment. It was found that the petitioner had failed to discharge burden of establishing how she was appointed in a clear and vacant post. The Tribunal observed that although there may have been vacancy, the appointment did not follow the regular selection process and roster was also not forthcoming. It was however, accepted that the petitioner had completed seven years of service and on that basis, the Court found that the petitioner is entitled for compensation under Section 11(3)(e) of the Act which empowered the Tribunal to exercise aforesaid discretion.

29. The Tribunal therefore exercised its discretion under Section 11 and granted six months salary at the rate it was last paid to her by retaining her preferential right over the post when there will be clear permanent post. Thus, the prayer for reinstatement was rejected.

30. Mr.Naidu had in the course of submissions relied upon copies of the letter dated 11th August, 2011 whereby the respondent school sent a proposal to the Education Officer, Satara Zilla Parishad wherein the petitioner's name was included as part time Shikshan Sevak. Mr.Naidu stated that she had completed three years of service and the letter enclosed therewith contained 12 documents in support of the application and

seeking that she be made permanent. A reply dated 19th August, 2011 is relied upon whereby the Education Officer sought information from the school as to under which Government decision approval of the petitioner has been sought. A further letter dated 14th March, 2012 has been issued by the School to the Education Officer confirming that the petitioner has completed three years as of 26th March, 2011 and enclosed the same 12 documents sent earlier for further action. The letter appears to be replica of which it was sent on 11th August, 2011 and does not appear to deal with the request contained in the letter dated 19th August, 2011, and communication dated 21st April, 2012 the respondent no.3 sought information from respondent no.2 – Head Mistress of the School with regard to appointment of the petitioner as part time Shikshan Sevak. Vide letter dated 20th July, 2012 addressed by the School of the Education Officer reference was made to the petitioner's case reiterating the fact that under Government Resolution dated 10th June, 2005 there was no restriction in appointing the petitioner on a permanent post and requesting appropriate approval. On 5th November, 2011 Education Officer, Satara Zilla Parishad addressed a letter to the School stating that the petitioner does not fulfill criteria and hence the petitioner cannot be granted regular pay scale.

31. Having considered all factual aspects of the matter and the findings of the Tribunal, prima facie, the order of the Tribunal is an attempt to do

justice to the petitioner in a limited way but the fact remains that the petitioner had not been able to establish that her appointment was pursuant to advertisement. In this behalf it is pertinent to mention that the petitioner has in paragraph 4 of the petition contended that she had applied in response to advertisement for a teaching post and accordingly was called for interview. The impugned order initially records the Respondents' advertisement had been published (paragraph 6 of the impugned order). In paragraph 14 the order records that the newspaper carrying the advertisement was not produced. It is not known which of these two versions is correct. It is also not clear whether the appointment was in open category or not since the Roster was not produced and it could not be verified whether the appointment was made on probation.

32. Whether the advertisement was issued and whether it was not produced by either side is not something that can be determined in these proceedings. Non-production of advertisement and roster has resulted in some inadequacies and the Tribunal is seen to have been concerned by non production of the Advertisement and the roster. It is evident that the school had all along supported the petitioner in her case for appointment to permanent post and also pursued the same with the Education Officer, who had remained absent at the hearing of the appeal. The Tribunal did not have assistance in terms of the relevant documents. The order of the Tribunal clearly records that the petitioner had seven years of service. If that were so

the petitioner would probably have completed her probation. The respondent-management had over time, taken up a plea which is clearly inconsistent with the stand in correspondence referred to by Mr.Naidu.

33. In the circumstances, it is appropriate that the matter be remanded to the Tribunal for fresh hearing on merits and after giving an opportunity to the petitioner to agitate her case on the basis of initial appointment. The respondent nos.1 to 3 are also put to notice that they are required to produce before the Tribunal the initial advertisement(s) in response to which the petitioner's application was received and the appointment letters issued. The management shall also produce the roster in question since it prima facie appears that the management, on second thought, failed to act impartially. If the advertisement and Roster are not produced, the tribunal will be justified in drawing an adverse inference.

34. That having been said, the management had also contended that numerous letters at Exhibit-H-1 to H-6 have not been received by the school. Although these were filed before the Tribunal the impugned order does not deal with the same. It was the case of the petitioner that these letters were received by the school and remained to be replied. It was incumbent upon the tribunal to consider this aspect as well, provided of course, the petitioner is able to satisfy the Tribunal that the letters were in fact sent. In view of the above, I pass the following order :

- (i) The impugned order dated 3rd May, 2017 is set aside.
- (ii) The appeal is remanded to the School Tribunal, Kolhapur to be heard afresh, uninfluenced by observations made herein.
- (iii) Considering the fact that the appeal was initially instituted in the year 2013, it is appropriate that the Tribunal decides the appeal within one month from today. The Education Officer respondent no.3 shall also remain present at the hearing of the appeal.
- (iv) Respondent Nos.1 and 2 are directed to produce the advertisement and the roster at the hearing and grant inspection of the roster to the petitioner and Advocate within a period of two weeks from today.
- (v) The parties shall appear before the Tribunal on 25th July, 2018 to enable the Tribunal to fix schedule of the hearing.
- (vi) Rule made absolute in the aforesaid terms.

(A.K. MENON,J.)