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

WRIT PETITION NO. 6537 OF 2014

1. Dnyansagar Shikshan Prasarak Mandal
C/o Vikas Mandir Primary School,
Barrack No. 1274/1, OT Station,
Ulhasnagar, District Thane.
Through its Chairman.

2. Mrs. Vaishali Pramod Sawant
(Miss. Vaishali Shivaji Gaigavale)
Aged 40 years, Occupation :- Service,
R/o. Gurukrupa Apartment,
Lokmanya Nagar, Pada No.4,
Thane (W).

3. Shri Ajay Brijlal Verma,
Aged 26 years, Occupation Service,
R/o Jagruti Colony, Near Municipal
School No. 14, OT Station,
Ulhasnagar-4, District-Thane.

... Petitioners

Vs.

1. The State of Maharashtra
Through the Secretary,
School Education Department,
Mantralaya, Mumbai-400 032

2. Ulhasnagar Municipal Corporation
School Board, Ulhasnagar,
District Thane,
Through its Administrative Officer

... Respondents

Mr. Narendra V. Bandiwadekar with Mr. Vinayak Kumbhar, Advocates for
Petitioners in both Petitions.

Mr. A.I. Patel, Addl. Government Pleader, State with Ms. Kavita N.
Solunke, Advocates for Respondents-State in both Petitions.

**CORAM : R.D. DHANUKA &
ABHAY AHUJA, JJ.**
RESERVED FOR ORDER ON : 9TH SEPTEMBER 2021
PRONOUNCED ON : 29TH SEPTEMBER 2021

JUDGMENT : (PER ABHAY AHUJA, J.)

1. Rule. Rule made returnable forthwith. By consent of counsel for the parties, petition is heard finally.

2. By this petition filed under Article 226 of the Constitution of India, 1950 petitioners are challenging the order dated 20th February 2014 issued by respondent no. 1 thereby refusing to sanction posts of non-teaching employees in private primary schools in the State and for a declaration that the existing posts / in-service non-teaching employees as surplus and to absorb them if the vacancies are available in the secondary and higher secondary schools. In short petitioners have been appointed as non-teaching staff in aided primary school of petitioner no. 1, but the second respondent has not yet granted approval to the said appointments.

3. The facts leading to the filing of this petition are as under:-

(i) Petitioner no.1 is an educational institution registered under the Bombay Public Trusts Act, 1950 and the Societies Registration Act, 1860

and had been granted permission at various points in time for running Marathi medium primary school at Ulhas Nagar, Dist. Thane on unaided basis of permissions by Deputy Director of Education to run standard I from the year 1995-96 to standard VII in the year 2001. The petitioner no. 1 runs the school by the name of “Vikas Mandir Primary School”. It is submitted that all these permissions were granted on an unaided basis. It is also submitted that at present the school is having classes from standard I to VII.

(ii) It is submitted that by order dated 25th November 2003, respondent no. 2 sanctioned 100% grant-in-aid for standard I to IV and thereafter by order dated 4th December 2006, 40% grant-in-aid came to be sanctioned to standard V, VI and VII from AY 2006-07. It is submitted that later on further stages of grant-in-aid also came to be sanctioned and the school became fully aided. It is submitted that at present the entire primary school viz. Standard I to VII is receiving 100% grant-in-aid.

(iii) The 2nd respondent is the board established under the Bombay Primary Education Act, 1947 (the “BPE Act”); is the authority competent to sanction post of teachers and non-teaching employees for private,

recognized primary schools and to grant approval to the appointments of employees made in such sanctioned posts including those in respect of the primary schools run by the 1st petitioner.

(iv) It is submitted by petitioners that in AY 2004-05 (as on 30th September 2004), the strength of students in the said primary school became 503 and as per Rule 115 (3)(b) of the Bombay Primary Education Rules, 1949 (the “BPE Rules”) framed under the BPE Act, one post of clerk became admissible to the primary school of the petitioner. On 12th July 2004 the State Government issued a Government Resolution to lift ban which had been imposed on the recruitment of non-teaching employees in private, recognized and aided private primary schools and granted permission to make appointment on an honorarium. It is under these circumstances, it is submitted that petitioner no.1 decided to appoint a clerk for the school. It is submitted that after the selection procedure, the 2nd petitioner came to be selected for the post of “clerk” and after passing of the necessary resolution by the management, the 2nd petitioner was appointed as clerk with effect from 1st December 2004 till 30th September 2006 on probation for a period of two years and the 2nd petitioner joined the school as clerk. It is further submitted that similarly in AY 2005-06 (as

on 30th September 2005), as the students' strength continued to be around 500 being stated to be 513, the first petitioner decided to appoint a "peon" for the primary school. After the selection procedure, the 3rd petitioner was selected for the post of peon and on 9th May 2005 and after the necessary management resolution, he was appointed as peon from 1st June 2005 to 30th April 2007 on a probation period of two years and the 3rd petitioner joined as peon.

(v) By letter dated 12th April 2006, the head master of the school submitted a proposal to the second respondent-corporation requesting for grant of approval to the said appointments of petitioners no. 2 and 3 in the respective posts of "clerk" and "peon". It is submitted that as there was no response from the 2nd respondent, another letter dated 13th February 2007 was submitted to the 2nd respondent.

(vi) On 24th August 2007, the 2nd respondent submitted a detailed proposal to the Deputy Director of Education, Mumbai region requesting for sanction of one post of clerk and one post of peon in which the petitioners no. 2 and 3 were shown to be working.

(vii) By letter dated 12th February 2008, the Deputy Director of Education forwarded the said proposal to the Director (Primary), Maharashtra State, Pune and by letter dated 23rd September 2010, the said Director (Primary) forwarded proposals including that of the 1st petitioner to the 1st respondent, requesting issuance of a Government Order sanctioning the requested posts for the schools mentioned therein.

(viii) It is submitted that on 29th May 2014 a representation was submitted to the office of the first respondent-State reiterating the aforesaid request.

(ix) That despite the proposal pending at Government level and the said employees working for about 9 to 10 years, Government failed to grant sanction stating vide its Minutes of Order dated 20th February, 2014 that in view of the Right Of Children To Free And Compulsory Education Act, 2009 and (the “RTE Act”), the non-teaching posts could not be sanctioned to the private primary schools and therefore, the posts which were in existence would be declared surplus; that if vacant posts were available in the secondary and higher secondary schools, then the non-teaching employees in the private primary schools should be absorbed in those

posts. The relevant portion of the said minutes at item no. 4 is reproduced as under:-

४.	यापूर्वीच्या निकषानुसार अनुज्ञेय असल्याप्रमाणे खाजगी प्राथमिक शाळांना ५०० किंवा अधिक गटसंख्यासाठी १ कनिष्ठ लिपिक व १ सेवक पद पूर्वीप्रमाणे मंजूर करणेबाबत विचार व्हावा.	आरटीईनुसार सद्यस्थितीत खाजगी प्राथमिक शाळांसाठी शिक्षकेतर पदे मंजूर करता येणार नाही. सध्या अस्तित्वात असलेली पदे अतिरिक्त ठरवावीत. तसेच रिक्त जागा उपलब्ध असल्यास माध्यमिक तसेच उच्च माध्यमिक शाळेत त्यांचे समावेशन करण्यात यावे.
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Aggrieved by the said decision, representation was also made to the respondent no.1. In spite of the aforesaid, there has been no favourable response and the petitioners have approached this Court.

4. On behalf of the petitioners, learned counsel, Mr. Bandiwadekar submits that it is evident that since the strength of the students in the Primary School of the Petitioner No.1 institution exceeded 500, the school became entitled to be sanctioned one post of Clerk and one post of Peon, in accordance with Rule 115 (3) (b) of the Bombay Primary Education Rules, 1949. That, therefore, the management made appointment of Petitioner No.2 as a Clerk and thereafter made the appointment of Petitioner No.3 as a Peon in the said Primary School. After making the aforesaid appointments, the necessary proposal was submitted by the

Head Master of the school seeking approval to the said appointments. However, no immediate action was taken on the said proposal. Learned Counsel submits that the Respondent No.2 by letter dated 24.8.2007 submitted detailed proposal to the Deputy Director of Education, Mumbai Region, and requested to sanction the said 2 posts. Thereafter, the said Deputy Director of Education forwarded the proposal by letter dated 12.2.2008 to the Director (Primary), M.S. Pune making similar recommendation. By his letter dated 23.9.2010, the said Director made recommendatory proposal to the Respondent No.1 and requested to sanction one post of Clerk and one post of Peon for the Primary School of Petitioner No.1 Institution.

5. Learned counsel submits that inspite of the above referred recommendations made by all the lower authorities and the school otherwise being qualified to obtain the sanction the Respondent No.1 failed to take any decision on the said proposals.

6. Learned counsel would submit that even otherwise the proposal was submitted long back in the year 2007-2008, it was necessary for the Respondent No.1 to take decision on that proposal immediately. The

Respondent No.1 cannot refuse to sanction the said posts now on the basis of the impugned decision taken at the meeting held on 20.2.2014. The said order will be applicable prospectively, and the same cannot be made applicable retrospectively to the proposals which were made long back, but were kept undecided by the Respondent No.1.

7. It is urged that the decision taken on 20.2.2014, deciding not to sanction the non teaching posts in respect of private aided Primary Schools in the State of Maharashtra, is illegal and bad in law. Learned counsel submits that every Primary School requires the services of a Junior Clerk and a Peon for its day-to-day functioning; a Junior Clerk is required to carry out the clerical work of the Primary School such as preparation of salary bills, making correspondence with the Education Department and other concerned offices, all other clerical work required for daily functioning of the school etc.; the services of a Peon are also very much required in every Primary School for different types of work such as cleaning the school premises, ringing the school bells, circulating notices in the schools amongst the staff and to the students in the class rooms, to carry the correspondence of the school to the Management, to the Education Officer, School Board etc. A Primary School therefore cannot

function without a clerk and also without a peon. It is submitted that the impugned order dated 20.2.2014 is totally illegal and without due application of mind and without considering repercussions due to the said decision.

8. Mr. Bandivadekar submits that in accordance with the impugned order in view of the RTE Act and Rules, the non teaching posts cannot be sanctioned in the aided Primary Schools. He submits that the said reason is totally illegal and unsustainable. That only because in the RTE Act there is no provision regarding appointment of non teaching employees in the Primary Schools, that does not mean that no sanction should be granted for new Clerk and new Peon in the existing Primary School and that even the existing posts of non teaching employees in the private Primary Schools should be abolished or declared surplus. There is no such provision made either under the RTE Act or under the Maharashtra RTE Rules, which requires the Government to abolish/declare surplus even the existing sanctioned posts of non teaching employees in the Primary Schools. That the Respondent has erred in not taking into consideration the provisions of the BPE Rules framed under the BPE Act. In the absence of any contrary provision in the RTE Act and the Rules, the Respondent

ought to consider the provisions of the BPE Act and the Rules thereunder. He submits that under Rule 115 of the Rules 1949, one Junior Clerk and one Class IV servant is admissible for the Primary School having strength of 500 or more. Hence, considering the said provision under the Rules 1949, even today the posts of Junior Clerk and Peon are admissible for such Primary Schools.

9. The Petitioners state that under the above circumstances, it is necessary to quash and set aside the impugned order dated 20.2.2014 so far as it relates to non sanctioning of the non teaching posts in private Primary Schools.

10. He submits that due to this inaction on the part of Respondent No.1, in the interest of justice, it is necessary to direct the Respondent No.1 to pass necessary order and to direct the Respondent No.2 to grant approval to the appointment of Petitioner No.2 and 3 made in their respective posts from the date on which they came to be appointed in those posts respectively.

11. On behalf of the respondents, a detailed affidavit in reply dated 9th March 2021 has been filed. It is submitted that pursuant to the coming into force the RTE Act, the private primary schools which are run by institutions registered either under the Maharashtra Public Trusts Act, 1950 or the Societies Registration Act, 1860 are expected to raise their own resources and are not expected to rely fully on Government support. It is then submitted that such organisations are expected to use their own resources to the extent of at least 10% of their total expenses while the Government bears the bulk of 90 % of expenses. It is further submitted that the Right to Education Act has consciously not made any provision for providing Government support for non-teaching staff in primary schools as primary schools are not expected to have much requirement of non-teaching staff such as librarian and lab assistant and that cleaning services can be easily obtained by outsourcing.

12. It is also submitted that primary schools are not directly provided support in terms of non-teaching staff but they are provided many other types of support in view of non-teaching expenses which are not even provided to secondary schools. Also the staffing pattern is applicable only for secondary and higher secondary aided/partially aided schools. The

Government does not even give any grant for non-teaching staff to Zilla Parishad Primary Schools as they are expected to manage the same from their own resources. The local bodies provide the services of non-teaching staff informally to primary schools as and when required through their own local resources and private aided schools are also expected to do the same. It was also submitted that the Government does provide other major support to primary schools which is not available to secondary schools. The private aided primary schools are provided with free text books, free mid-day meals and also lumpsum non-salary grant apart from salary grant.

13. It is submitted that approximate expenditure incurred on about 5926 private aided schools for non-teaching purposes is approximately Rs.2400 crores, in addition to Rs.6232 Crores on the salary of teachers of primary schools run by private management in the State. To provide additional financial support for non-teaching staff in the private primary schools as that of the first petitioner, the State Government will have to bear huge additional financial liability beyond the scope of the RTE Act. That even in regular government offices, the State Government has taken a decision of outsourcing class-IV employees instead of appointing them

on regular posts in Government and semi-Government offices. It is submitted that the school education department would also be bound by such a policy. It was also submitted that with effect from 1st April 2010 after the commencement of RTE Act, the Bombay Primary Education Act 1947 and the Rules framed thereunder have been repealed with effect from 1st July 2013. Learned AGP, Mr. Patel, reiterates the above and submits that the petition, therefore, does not merit any orders.

14. Mr. Bandivadekar, learned counsel for the petitioners rejoins that even though by the coming into effect of the RTE Act, the Bombay Primary Education Act 1947 has been repealed and even though there is no provision in the RTE Act to provide for sanction to non-teaching posts, in view of the fact that when the proposal of the first petitioner was recommended by the Deputy Director Education, the first petitioner was entitled to the sanction for one post of clerk and one post of peon in their primary school.

15. Learned counsel also draws our attention to Rule 115(3)(a) of the BPE Rules to submit that the actual expenditure on salaries which is paid as grant to the school is also in respect of non-teaching staff as applicable

to pay scale to similar employees of the State Government. Reference is also made to Rule 115(3)(b) of the BPE Act to submit that such salaries of one junior clerk and one class-IV servant in the approved pay scale similar to State Government employees is granted in the case of a school having strength of 500 or more. He reiterates that the RTE Act nowhere prohibits grant-in-aid for non-teaching staff.

REASONS AND CONCLUSIONS

16. We have heard learned counsel Mr. Bandivadekar for petitioners and Mr Patel, learned AGP for respondents and with their able assistance we have perused the papers and proceedings in the matter.

17. Facts not being in dispute, the question to be answered is whether the proposal requesting sanction to the two posts as recommended by the Deputy Director, Director (Primary) of Respondent no.1 would survive in the face of the repeal of the Bombay Primary Education Act 1947 and the Bombay Primary Education Rules.

18. Before we answer this question, a few relevant dates and events are pertinent :-

Date	Event
01/12/04	Petitioner No.2 appointed as Clerk.
01/06/05	Petitioner No.3 appointed as Peon.
12/04/06	Headmaster submitted proposal to the Municipal Corporation for grant of approval for the said appointments.
26/08/07	The Corporation submitted a detailed proposal to Deputy Director of Education requesting for the said sanction.
12/02/08	Deputy Director of Education forwarded proposal to Director (Primary) Maharashtra State.
23/09/10	Director (Primary) Maharashtra State forwarded proposals to 1 st Respondent requesting issuance of Government Order sanctioning the posts.
01/04/10	RTE Act, 2009 comes into force.
01/07/13	The City of Mumbai Primary Education, the Maharashtra Primary Education, the Hyderabad Compulsory Primary Education and the Madhya Pradesh Primary Education (Repeal) Act, 2013 (the "Repeal Act") comes into effect.

19. The Right of Children to Free and Compulsory Education Act, 2009 ("**RTE Act**") has been brought into force with effect from 1st April 2010. It is also to be noted that the Bombay Primary Education Act, 1947 came to be known as the Maharashtra Primary Education Act, in 2012 (by Maharashtra Act 24 of 2012).

20. With a view to have uniformity in the primary education system and strict implementation of the provisions of the RTE Act in the state of Maharashtra, the State Government decided to repeal *inter alia* the City of Mumbai Primary Education Act, 1920 the Maharashtra Primary Education Act, 1947. As both houses of the State Legislature were not in session, an Ordinance was issued by the Governor of Maharashtra repealing *inter alia* the City of Mumbai Primary Education Act, the Maharashtra Primary Education Act on 1st July 2003. The said Ordinance was replaced by an act of the State Legislature and was known as Repeal Act which is deemed to have come into effect on 1st July 2013.

21. It would now be pertinent to refer to the RTE Act as well as the BPE Act to ascertain whether there are any saving clauses for acts or rights accrued prior to the coming into effect of the RTE Act or the repeal of the Bombay / Maharashtra Primary Education Act 1947. Having perused the RTE Act we are unable to locate any provision which saves any acts or rights that have accrued prior to the coming into force of the RTE Act.

22. However, Section 3 of the said Repeal Act is relevant and is quoted

as under:

“3 (1) On the commencement of the City of Mumbai Primary Education, the Maharashtra Primary Education, the Hyderabad Compulsory Primary Education and the Madhya Pradesh Primary Education (Repeal) Act, 2013 (hereinafter referred to as “the said Act”),—

- (a) the City of Mumbai Primary Education Act;*
- (b) the Maharashtra Primary Education Act;*
- (c) the Hyderabad Compulsory Primary Education Act, 1952; and*
- (d) the Madhya Pradesh Primary Education Act, 1956, shall stand repealed.*

(2) On and from the date of commencement of the said Act,—

- (a) the School Boards, Local Committees or any other Committees or Boards constituted under the repealed Acts and the rules made thereunder, shall stand dissolved at the expiry of their respective terms and the members shall vacate their offices accordingly ; such School Boards, Local Committees or any other Committees or Boards shall work under the superintendence, direction and control of the concerned local authority ;*
- (b) the concerned local authority may constitute School Boards, Local Committees or any other Committees or Boards as per their requirements and in accordance with the provisions of the law applicable to such local authority;*
- (c) all properties movable and immovable, and interests of whatever nature and kind therein, vested in the School Boards and Local Committees, immediately*

before the commencement of the said Act shall be deemed to be transferred to, and shall vest in the concerned local authority subject to all limitations and conditions and rights or interests of any person, body or authority in force or subsisting immediately prior to such commencement;

(d) all debts, liabilities and obligations incurred by School Boards and Local Committees, immediately before the commencement of the said Act and lawfully subsisting against any such School Boards and Local Committees shall be discharged and satisfied by the concerned local authority;

(e) every employee serving under the School Boards and Local Committees, immediately before the commencement of the said Act shall stand transferred to the concerned local authority, and the salaries and existing terms and conditions of service of such employees shall continue until duly altered or modified by the local authority : Provided that, the conditions of service applicable to such employees immediately before the commencement of the said Act shall not be varied to their disadvantage;

(f) the salaries and existing terms and conditions of service of the teaching and non-teaching employees of the schools established under the repealed Acts and appointed as per the Government orders, issued from time to time, shall be continued as per the existing Government policy until duly altered or modified by the Government: Provided that, the conditions of service applicable to such employees immediately before the commencement of the said Act shall not be varied to his disadvantage;

(g) the setup of the officers conferred with duties under the repealed Acts and rules made thereunder such as

Director, Joint Director, Deputy Director, Education Officer, Deputy Education Officer and the like, appointed by the State Government, shall be continued until duly altered or modified by the Government;

(h) the Provident Fund, Gratuity, Pension and other benefits payable to the teaching and non-teaching employees of schools established under the repealed Acts, shall be maintained and paid by the concerned local authority as per the existing policy under the repealed Acts and the rules made thereunder ;

(i) the grants and rent payable to the schools established under the repealed Acts shall be paid by the Government as per the existing policy under the repealed Acts and the rules made thereunder until duly altered or modified by the Government;

(j) the Primary Education Fund maintained under the repealed Acts, shall stand transferred to the concerned local authority;

(k) the concerned local authority shall prepare the Budget in respect of the schools run by it in accordance with the provisions of the law applicable to such local authority;

(l) the powers of superintendence, inspection and control, in respect of the schools run by the Municipal Corporations shall be with the concerned Municipal Commissioner and other sub-ordinate officers authorized by him in that behalf; and in respect of the schools run by the Municipal Councils, Nagar Panchayats, Industrial Townships, and the Zilla Parishads, such powers shall be with the concerned Chief Officer or, as the case may be, the Chief Executive Officer and other sub-ordinate officers authorized by him in that behalf;

(m) the establishment of schools, syllabus,

examinations, administration and all related matters shall be subject to the provisions of the Right of Children to Free and Compulsory Education Act, 2009;

(n) all directions or orders issued by the Government in respect of the repealed Acts and the rules made thereunder before the commencement of the said Act, not inconsistent with the provisions of the Right of Children to Free and Compulsory Education Act, 2009, shall be continued and applicable, unless altered, modified or revoked by the Government;

(o) all appeals of employees of the schools established under the repealed Acts relating to the service conditions filed and pending before any authority under the repealed Acts, shall be continued and disposed of by such authority, until a new authority is established by the Government.

(3) The repeal of the Acts under sub-section (1) shall not affect—

(a) the previous operation of the repealed Acts or anything duly done or suffered thereunder ;

(b) any agreement, contract, right, privilege, obligation or liability acquired, accrued or incurred under the repealed Acts; (emphasis supplied)

(c) any penalty, forfeiture or punishment incurred in respect of any offence committed under the repealed Acts;

(d) any investigation, legal proceedings or remedy in respect of any such agreement, contract, right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid; and any such investigation, legal proceedings or remedy may be instituted, continued or enforced as if the repealed Acts had not been repealed;

(e) any appointments made by the School Boards and Local Committees, as per the Government orders, issued from time to time ; and (f) subject to the provisions of the Right of Children to Free and Compulsory Education Act, 2009, the schools established under the repealed Acts.

Explanation.—For the purposes of this section, the expressions “ School Boards ” and “ Local Committees” means the Boards and Committees dissolved under clause (a) of subsection(2).

(4) Save as otherwise provided in this Act, the provisions of section 7 of the Maharashtra General Clauses Act, with regard to effect of repeal, shall apply.”

23. Section 3(3)(b) of the Repeal Act is relevant. It stipulates that the repeal shall not affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or affect any right privilege/obligation or liability acquired, approved or incurred under any enactment so repealed.

24. It is undisputed that the 1st petitioner’s proposal for sanction of the post of one clerk and one peon had been made to the first respondent duly recommended by the Deputy Director of Education and the Director Primary. It is quite apparent that the proposal for sanctioning the above 2

posts were submitted to the 1st Respondent prior to the coming into force of the Repeal Act on 1st July, 2013 as well as the Minutes of Meeting dated 20th February 2014.

25. The Petitioners had acted on the basis of the applicable provisions of the BPE Act and the Rules and submitted their proposal for sanction to the local authority who in turn submitted to the Deputy Director who in turn submitted to the Director (Primary), Maharashtra State and the Director (Primary), Maharashtra State submitted the proposal to the Government on 23rd September 2010, much prior to the coming into effect of the Repeal Act on 1st July 2013.

26. It is also important to note that the petitioner no.1 had commenced the process of sanction of the proposal with respect to Petitioner Nos. 2 and 3 even prior to the coming into effect of the RTE Act on 1st April 2010. Also the submission of the proposal by the Director (Primary), Maharashtra State to the 1st Respondent was also prior to the coming into effect of the Repeal Act on 1st July 2013. Therefore, in our considered view in accordance with Section 3(3)(b) of the Repeal Act a right or a privilege had accrued in favour of the Petitioner under the Repeal Act which in

accordance with the Section quoted above shall not be affected.

27. It is also not in dispute that the petitioners were otherwise qualified to obtain the grant of approval under the BPE Act and the BPE Rules. However, as can be seen from the submissions made on behalf of the respondents that in view of the RTE Act which provides for sanction/ approval of the teaching staff of primary private schools, the non-teaching posts could not be sanctioned to the private primary schools and the existing posts would be declared surplus thereby failing to sanction Petitioner's proposal. While it may be true as submitted on behalf of the respondents that the Government's policy is to outsource class-IV employees or non-teaching staff as it may be strung on financial resources already spending more than 6000 crores on the salary of teachers of private primary schools and approximately 2400 crores towards non-teaching expenses for such schools, but that argument would hold good if first petitioner would have either made the application after the coming into force of the Repeal Act or that it was otherwise not qualified to obtain the approval.

28. The proposal of the first petitioner duly recommended by the

authorities sent to the first respondent gives rise to a right or privilege accrued in favour of the petitioners to receive sanction/approval of the two posts as the said actions/right/privilege were prior to the repeal of the BPE Act. As noted above, the RTE Act does not provide for any clause on repeal or saving and therefore, in our considered view in accordance with Section 3(3)(b) a right or a privilege had accrued in favour of the Petitioner under the Repeal Act which in accordance with the Section quoted above shall not be affected. Therefore, the State Government ought to have considered the proposal in respect of the Petitioner in accordance with the now repealed BPE Act and Rules and could not have vide its Minutes of Meeting dated 20th February 2014 stated that “in view of the RTE Act, the non-teaching posts could not be sanctioned to private primary schools and that the posts which were in existence would be declared surplus and that the non-teaching employees in the private primary schools should be absorbed in those posts if vacant posts were available in the secondary and higher secondary schools”.

29. The provisions of the BPE Act and BPE Rules would therefore have application in the case of the petitioner. Rule 115 of the BPE Rules which is relevant for the purpose, is quoted as under:-

“115. Determination of grant:- (1) Normally grant paid to an approved private school in any year is the grant for that year and shall be calculated on the basis of the total admissible expenditure of the preceding year : provided that no grant for approved schools shall be paid in any year unless the average attendance of the pupils is 25 or above in Standards I to IV and 20 or above each in Standards V and VI, and 15 and above in Standards VII during preceding year.

(2) The maximum maintenance grant for an approved private schools shall be $66\frac{2}{3}$ percent of the admissible expenditure on approved items of the preceding year or net deficit, whichever is less.

(3) For the purposes of sub-rule (2), the admissible expenditure includes-

(a) the actual expenditure on salaries of approved pay-scale laid down from time to time by the Department on the number of admissible teaching and non-teaching staff applicable to similar employees in the service of the State Government.

Explanation:- For the purpose of clause (a), the admissible teaching staff shall be determined as follows, namely:-

(i) For private primary schools running Standard I to IV only, the number of teachers admissible should be decided according to the average number of students on roll per month in the preceding year. One teacher should be held admissible for an average of 40 students on roll. If 11 students exceed the average of 40, one additional teacher should be held admissible. If the average students on roll exceed 200 one additional teacher should be held admissible. For example, if the average number of students on roll is 200 to 210, then 6 teachers should be held admissible (5 teachers according to the ratio of 1 teacher for 40 students and 1 additional teacher for the reason that the average strength exceeds 200);

(ii) For private primary schools running Standards I to V, I to VI or I to VII, 1 teacher should be held admissible for an average of 40 students in Standards I to IV and for each division of Standards V to VII 1-3 teachers should be

held admissible. In such schools no extra teacher should be held admissible when the average number of students of roll exceeds 200;

(iii) If the condition of average attendance prescribed for Standards V to VII is not fulfilled in any of these Standards, the admissible number of teachers for all the Standards from I to VII may be determined on the basis of one teacher per 40 students on the total average monthly enrollment and one additional teacher if the total average monthly enrollment of the school exceeds 200;

(b) Salaries of one Junior Clerk and one Class IV servant in the approved pay-scale applicable to similar employees in the service of the State Government in case of school having strength of 500 or more. (emphasis supplied)

(c) Leave salaries, that is to say, the expenditure incurred by the management of a school on account of leave salaries paid to its employees provided the leave granted is within the limits of leave rules.

(d) Provident Fund contribution, that is to say, the contribution paid by the management of a school to the approved P. F. Scheme in respect of its employees.

(e) The amount of rent, taxes and insurance.-

(a) Rent

(i) Reasonable rent for the school building provided the rent is actually paid, and a certificate regarding reasonableness is obtained from the Executive Engineer of the Buildings and communications Department within whose jurisdiction the school building is situated.

(ii) Charges on account of taxes on school buildings provided these are actually paid by the management in respect of school building of which no rent is paid.

Example:- The total cost of a school building is Rupees on lakh. Assuming that a building grant of Rs. 20,000 was paid by Government to the school for construction of the school building and the remaining amount of Rs.

80,000/- was collected from donations or their own fund or loans from Government or from any other source. The amount of Rs. 80,000 is thus exclusive of the building grant. 7 1/2 percent of this cost.”

30. The above Rule clearly authorises sanction of grant of actual expenditure on salaries of approved pay scale on admissible teaching as well as non-teaching staff and Explanation (iii)(b) refers to salaries of one junior clerk and one class IV servant in a school having a strength of 500 or more. Undisputedly, the Petitioners meet the criteria.

31. In this view of the matter, we are inclined to exercise our writ jurisdiction in the matter. The decision at item No.4 of the Minutes dated 20th February 2014 is not tenable in the circumstances and is accordingly quashed and set aside.

32. We accordingly direct the first respondent to grant the proposal of the first petitioner for sanction of one post of clerk and one post of peon in respect of petitioners no. 2 and 3 in accordance with our aforesaid observations and release grant and other dues payable on such approval from the initial date of appointment of the petitioners no.2 and 3 within four weeks from today.

33. We direct the first respondent to enter the name of the petitioners no. 2 and 3 in Shalarth ID within two weeks from the date of granting approval in the name of the petitioners no. 2 and 3 to the said post.

34. Rule is made absolute in the above terms. Writ petition is disposed with no order as to costs. Parties to act on the authenticated copy of this judgment.

(ABHAY AHUJA, J.)

(R.D. DHANUKA, J.)