

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

**LETTERS PATENT APPEAL NO. 352 OF 2010
IN
WRIT PETITION NO. 891 OF 2006**

Prakash Babarao Shingane,
Aged about 52 years,
Occupation - Nil,
R/o Chincholi Shingana,
Tq. Anjangaon Surji,
Distt. Amravati.

... **APPELLANT**

V E R S U S

1. Janta Education Society,
Chausala, Tq. Anjangaon Surji,
Distt. Amravati, through its
President.

2. The Headmaster,
Smt. Shewantbai Kalmegh
Junior College, Chausala,
Tq. Anjangaon Surji,
Distt. Amravati.

3. The Deputy Director of Education,
Amravati Division, Amravati,
Tq. Distt. Amravati.

... **RESPONDENTS**

Shri P. A. Kadu, Advocate for appellant.

Shri R. J. Mirza, Advocate for respondent Nos.1 and 2.

Ms. S. S. Jachak, Assistant Government Pleader for respondent
No.3.

CORAM: A.S. CHANDURKAR AND G. A. SANAP, JJ.

ARGUMENTS WERE HEARD ON : 11/08/2021

JUDGMENT IS PRONOUNCED ON : 25/08/2021

JUDGMENT : (PER : G. A. SANAP, J.)

1. In this Letters Patent Appeal, challenge is to the Judgment and order dated 04/11/2009 passed by the learned Single Judge in Writ Petition No.891/2006, whereby the learned Single Judge allowed the writ petition and quashed and set aside the order passed by the Presiding Officer of School Tribunal, Amravati dated 11/10/2005. The Presiding Officer of School Tribunal, Amravati by the said order dated 11/10/2005 had allowed the appeal filed by the appellant and directed his reinstatement in service with back-wages.

The facts leading to the filing of this Letters Patent Appeal are as follows :-

2. The respondent No.1 is a registered society and registered Public Trust. It runs Smt. Shewantabai Kalmegh High School and Junior College at Chausala, Tq. Anjangaon Surji, Dist. Amravati. It is the case of the appellant that at the time of his first appointment on 02/08/1985 on fixed salary of Rs.250/- per month for a period up to 30/06/1986, he was possessing the qualification of M. Com. B.P.Ed. The Director of Education approved his appointment on pay scale of Rs.250/- - Rs.450/- for Academic Session 1985-1986 for the subjects of Commerce and

Physical Education. As per the order dated 28/06/1986, the said appointment was continued for a period from 01/07/1986 to 08/05/1987 on a fixed pay of Rs.500/- per month. The Deputy Director of Education granted approval to this appointment on 23/02/1987. It is the case of the appellant that he was appointed vide order dated 09/07/1987 on clock hour basis for the period from 09/07/1987 to 24/03/1988. The Deputy Director of Education vide order dated 17/10/1988 granted approval to this appointment from 09/07/1987 till the end of Academic Session 1987-1988. The appellant has made a grievance that this order was fabricated because in fact, he was appointed from 09/07/1987 to 24/03/1988 in a clear vacancy.

3. It is further stated that later on, the respondent No.1 by following due procedure appointed the appellant as Lecturer on probation of two years by order dated 18/08/1988. He continued to serve till his oral termination on 26/06/1991. It is his case that on the date of his termination, he had acquired the status of deemed confirmed employee under the provisions of Section 5 (2) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (Hereinafter referred to as "the M.E.P.S. Act").

4. It is the further case of the appellant that one Shri G.S. Khule had challenged his termination by filing an appeal before the School Tribunal. The services of Shri Khule were terminated for want of approval by the Director of Education. The appellant was not appointed on the post held by Shri Khule. It is stated that in the said appeal the management of the respondent No.1 took a stand that as per the order of Deputy Director of Education to promote one Shri Yawle, the services of Shri Khule were terminated. The School Tribunal had granted stay to the termination of Shri Khule. Similarly, the respondent No.1 in Shri Khule's appeal admitted that the appellant was appointed on probation period of two years and on completion of probationary period of two years satisfactorily, acquired the status of deemed confirmed employee. However, in the meantime, the management was changed on 16/06/1991. The new management arbitrarily and illegally, orally terminated the services of the appellant contrary to the provisions of law. According to the appellant, in the appeal filed by Shri Khule bearing No.144/1988, he was allowed to intervene in the said appeal. Appeal filed by Shri Khule was allowed. The appellant had challenged the said Judgment by filing a Writ Petition No.893/1993 and it was disposed of by this

Court on 23/02/2005 with a liberty to the appellant to approach the School Tribunal within a period of one month to challenge his termination dated 26/06/1991. The appellant, therefore, challenged his termination contending that he was appointed on a permanent vacancy and after completion of two years service, he acquired the status of deemed confirmed employee.

5. The respondent Nos.1 and 2 opposed the claim of the appellant. They denied the material facts pleaded by the appellant. They denied that the appellant was appointed on probation of two years. It is contended that respondent No.3 rightly refused the approval for the appointment of the appellant because the reinstatement of Shri Khule was allowed as per the order passed in Appeal No.144/1988 by the School Tribunal. According to the respondents, there was a Commerce and Arts College attached to High School since the academic year 1984-1985. However, the said Commerce Faculty was closed in the year 1992-1993 on account of inadequate strength of the students. In the said year, there was no admission in 11th Std. and therefore, it was closed in the year 1993 and 12th Std. was closed in the year 1993-1994. The Deputy Director had specifically informed the respondent Nos.1 and 2 vide letter dated 16/08/1991 that the

teachers appointed in the last academic year should not be continued. It is, therefore, contended that on account of this, the temporary services of the appellant were terminated w.e.f. 26/06/1991. The termination according to them is legal and proper. The learned Presiding Officer of the School Tribunal decided the appeal in favour of the appellant and held his termination dated 26/06/1991 illegal and directed his reinstatement.

6. Being aggrieved by the said order, the respondent Nos.1 and 2 had filed writ petition in this Court. Learned Single Judge as stated aforesaid, vide order dated 04/11/2009, allowed the writ petition and set aside the order passed by the School Tribunal.

7. Being aggrieved by the order passed by the learned Single Judge, the appellant has come before this Court by filing this Letters Patent Appeal. The grounds of challenge to the impugned order have been set out in the Memo of Appeal. The main ground is that the learned Single Judge has not properly appreciated the evidence and came to a wrong conclusion that the appointment of the appellant was illegal and invalid. It is also

contended that the material evidence placed on record has not been taken into consideration and as such, the same has resulted in causing injustice to the appellant.

8. We have heard learned advocate for the appellant, learned advocate for the respondent Nos.1 and 2 and the learned Assistant Government Pleader for respondent No.3. We have gone through the record and proceedings.

9. Learned advocate for the appellant submitted that the appellant was appointed vide order dated 18/08/1988 by following procedure and strictly in compliance with the provisions of law. Learned advocate submitted that various clauses of the appointment order and particularly, Clause (2) would prove beyond doubt that the appellant was appointed for a period of two years in a clear vacancy. Learned advocate submitted that the application made by him on 10/08/1988 for the appointment was processed by following procedure and on being satisfied with the fundamental requirements, he was given the appointment. Learned advocate submitted that the allegations made by the respondent No.1 that appointment order was issued by the then President without approval of the School Committee, cannot be

accepted because in para 9 of the reply affidavit dated 15/02/1991 to the application made by the appellant to intervene in the Appeal No.144/1988 before the School Tribunal, Amravati, the respondent Nos.1 and 2 have categorically admitted that the appointment of the appellant was against the permanent post and in a clear vacancy. Learned advocate submitted that there is no iota of evidence either to rebut this statement or to discard this statement. Learned advocate, therefore, submitted that the stand taken by the respondent Nos.1 and 2 in this proceeding that the appointment was purely on temporarily basis, cannot be sustained. Learned advocate submitted that in the appointment order, specific reference of the application made by the appellant for appointment has been made and the same therefore, clearly indicates that the appointment order was issued by following procedure. Learned advocate submitted that there is either no pleading or the pleading on record is too vague on the point that the appointment of the appellant had no approval of the School Committee. Learned advocate pointed out that the appointment order dated 18/08/1988 bears signature of the Secretary of the School Committee and the seal of the school. Learned advocate submitted that despite having ample evidence on record and the

said evidence being placed before the Deputy Director of Education, Amravati, he refused the approval on unsustainable grounds. Learned advocate submitted that the changed management of the respondent No.1 - School on or about 16/06/1991 had dispute with the erstwhile President and therefore, the appellant has been made a scapegoat of their rivalry. Learned advocate submitted that the learned Single Judge has not taken the entire evidence into consideration and reversed the well reasoned order passed by the learned Presiding Officer of the School Tribunal. Learned advocate therefore, submitted that the appeal deserves to be allowed in terms of the prayers.

10. Learned advocate for the appellant in order to substantiate his submissions, has relied upon the following reported decisions :-

- i] **(2010) 3 Supreme Court Cases 637**
(Krishan Singh Vs. Executive Engineer, Haryana State Agricultural Marketing Board, Rohtak (Haryana).
- ii] **2014 (4) Mh.L.J. 723**
(Shamin Azad Education Society, Giroli and others Vrs. Presiding Officer, School Tribunal, Amravati and others)
- iii] **2003 (4) Mh.L.J. 866**
(Anil Dattatraya Ade Vrs. Presiding Officer, School Tribunal, Amravati and others).

- iv] **2006 (2) Mh.L.J. 530**
(Ramchandar Ramadhar Yadav Vrs. Hyderabad (Sind) National Collegiate Board and another).
- v] **2017(1) Mh.L.J. 90**
(Trimurti Balak Mandir Shikshan Sanstha, Aurangabad and another Vrs. Vithabai Bhikan Desale and others).
- vi] **2016(6) Mh.L.J. 933**
(Anil s/o Govindrao Korde Vrs. Siddheshwar Krida Mandal, Sillod and others).
- vii] **2013(2) Mh.L.J. 713**
(Ramkrishna Chauhan Vrs. Seth D.M. High School and others).

11. Learned advocate for the respondent Nos.1 and 2 submitted that on appreciation and analysis of the evidence placed on record, in threadbare manner, learned Single Judge could notice the mischief played by the then President of the respondent No.1. Learned advocate submitted that the appointment was protegy of the then President and therefore, in order to favour him by sweeping the provisions of law and rules under carpet, the then President without approval of the School Committee and without following the procedure, appointed the appellant. Learned advocate submitted that the appellant was not appointed in a clear vacancy. Learned advocate submitted that the learned Single Judge has considered the documentary evidence placed on record in this regard. Learned advocate submitted that the finding of fact

arrived at by the learned Single Judge is the only possible conclusion one can arrive at on the basis of this evidence. Learned advocate submitted that the appointment order dated 18/08/1988 cannot be read in isolation with the other evidence on record. Learned advocate submitted that there was no question of oral termination of the services of the appellant inasmuch as his appointment was on a temporary post and that too for a limited period and as such, without further extension, it had come to an end. Learned advocate submitted that the appointment of the appellant was made by the then President in gross violation of the provisions of Section 5 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short, "the MEPS Act") and Rule 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules, 1981 (for short, "the MEPS Rules"). Learned advocate submitted that there was no advertisement, there was no open selection, the procedure required to be followed for filling up the vacancy in public employment was not at all followed and therefore, the so called appointment of the appellant was void *ab initio* since inception. Learned advocate submitted that the Deputy Director of Education, Amravati made it clear that the approval could not be

granted because the appellant was appointed on clock hour basis and without considering the backlog of the reserved category candidates. Learned advocate submitted that the Director of Education, Amravati granted approval on year to year basis and with specific stipulation that it was for temporary period and on clock hour basis. Learned advocate submitted that the then President without taking the School Committee and other members of the management into confidence, issued the order in tearing hurry. Learned advocate submitted that the reliance placed on reply filed by the then management to the intervention application made by the appellant in Appeal No.144/1988 cannot be given much weightage because the same was filed under the instructions of the then President, who had blessed the appellant. Learned advocate submitted that the facts stated in the said affidavit cannot be made the basis to accept the claim of the appellant without taking the other cogent and concrete documentary evidence into consideration. Learned advocate submitted that the Court if comes to the conclusion that the order dated 18/08/1988 is illegal and void *ab initio*, then the material sought to be relied upon to buttress the claim made by the appellant, needs no consideration.

12. Learned advocate for respondent Nos.1 and 2 submitted that the well reasoned Judgment of the learned Single Judge does not warrant interference inasmuch as the learned Single Judge has arrived at just conclusion on the basis of painstaking exercise of threadbare analysis and appreciation of the evidence. The learned advocate for respondent Nos.1 and 2 placed reliance on the unreported decision of Supreme Court in the case of Union of India and another Vrs. Raghuwar Pal Singh in Civil Appeal No.1636/2012 dated 13/03/2018.

13. In this appeal, Section 5 of the M.E.P.S. Act needs to be considered and applied in the backdrop of the disputed facts and the evidence placed on record by the parties in support of rival contentions. Same would be the position *vis-a-vis* Rule 9 of the M.E.P.S. Act. Section 5 speaks about the obligation of the management of the Private Schools. Sub-section (1) provides for filling in the permanent vacancy by appointment of a person duly qualified to fill such vacancy. Rule 9 of the M.E.P.S. Rules provides the procedure for the appointment of the teaching and non-teaching staff. Sub-rule (2A) provides that the management shall advertise the vacancies in the manner provided therein and also notify the vacancies to the Employment Exchange Center of the

District and District Social Welfare Officer. Sub-rule (7) provides for filling in vacancies reserved for backward classes. Sub-rule (9) provides that the post reserved for the backward classes as provided under Sub-rule(7) and Clause (a) of Sub-rule (10) shall not be filled in by the candidates belonging to the other castes, tribes, categories or classes, than, castes, tribes, categories of caste for which the posts are reserved. In our opinion, in the background of the tooth and nail fight between the appellant and the respondent Nos.1 and 2, it would be necessary to examine the material placed on record and to see whether the appointment of the appellant was made strictly in compliance with the mandate of law, as noted above.

14. It would be necessary to consider and analyze the documentary evidence relied upon by the parties to substantiate their rival contentions. In our opinion, if the documentary evidence indicates that the appointment of the appellant was not made strictly in compliance with the above provisions, then in that event, the facts stated in the affidavit filed by the erstwhile management in Appeal No.144/1988 would have to be ignored from consideration. The disputed appointment order is dated 18/08/1988. It is undisputed that before the order dated

18/08/1988, there were 3 orders issued to the appellant. It is pertinent to note that though these 3 orders are not bone of contention in this appeal, in our opinion, in order to appreciate rival contentions of the parties and to arrive at a just and reasonable conclusion, it would be necessary to refer to those orders. The first order of the appointment of the appellant is dated 02/08/1985. It was a temporary appointment for a period of one year from 02/08/1985 to 30/06/1986. This order was signed by the President and countersigned by the Principal. The Deputy Director granted approval to this appointment vide order dated 17/09/1985 for the Academic Session 1985-1986. At that time, the appellant was M. Com. B.P.Ed. and approval was granted for Commerce subject. The second appointment order is dated 28/06/1986. It was a temporary appointment from 01/07/1986 to 08/05/1987. It was approved by the President and signed by the Principal. The order of approval is dated 23/02/1987. The Deputy Director while granting approval made it clear that the approval was granted for the Academic Session 1986-1987 only because there was a backlog. The third order is dated 09/07/1987. It was from 09/07/1987 to 24/03/1988. It is the last order before the order which is subject matter of dispute in this appeal. The

approval was granted on 17/10/1988. Perusal of the approval would show that this appointment was on clock hour basis for teaching the subject of Organization of Commerce. The qualification of the appellant mentioned in this order was M.Com. B.P.Ed. The appointment was for academic session 1987-1988. It is therefore, seen that till the last order, there was no permanent vacancy. The appellant was appointed temporarily on clock hour basis.

15. It would now be necessary to see how the circumstances have changed warranting the issuance of the order in question dated 18/08/1988. At this stage, it is necessary to mention that the contents and clauses of three orders mentioned above and the order dated 18/08/1988 are identical. It is necessary to mention that particularly Clause No.2, except the period, is identical and without any change. It can be seen on perusal of the Annexure-IX at page 100 of the appeal that on issuance of the appointment order dated 18/08/1988, a request was made by the management of the respondent No.1 to combine the load of common subjects and physical training subjects so as to extend the benefit of the appointment to the appellant. Annexure-

IX is the letter dated 22/11/1988 issued by the Deputy Director of Education, Amravati to the management of the respondent No.1 - School. In this letter, the Deputy Director clearly stated that the prayer made in this letter, cannot be taken into consideration. It was reiterated that the approval earlier granted on clock hour basis was as per the rules and therefore, request made for combining the subjects was not allowed. There is documentary evidence on record received from the office of Deputy Director of Education, Amravati subsequent to the issuance of the order dated 18/08/1988. Annexure-IX is the order of granting approval to the teachers for the Academic Session 1989-1990. A note is appended to this order. In this note, it was categorically stated that the backlog of the reserved posts must be filled in on priority basis. This note, therefore, clearly indicates that there was backlog of the reserved category posts. There is Annexure to this order, wherein the name of the appellant has been mentioned. It shows that the approval was refused on the ground that the earlier approval was contrary to the rules and therefore, the further approval could not be granted. There is one more order dated 26/09/1990. It is marked as Annexure-XI. It pertains to the grant of approval to the teachers of respondent No.1 - School for the Academic Session

1990-1991. A note is also appended to this order under the signature of the Deputy Director. In this note, Deputy Director has reiterated that the backlog must be first completed by following due procedure. There is Annexure to this order. The name of the appellant has been mentioned therein. The reason for denying approval has been mentioned. Two reasons have been cited. It is stated that despite the stay by the School Tribunal, the continuous appointments were given to the appellant. The second important objection is that in the institution of respondent No.1, there was backlog and therefore, the approval could not be granted. In our opinion, in the backdrop of the aforesaid documentary evidence, the submissions advanced by the learned advocates for the appellant and the respondents touching the appointment letter dated 18/08/1988 needs consideration.

16. One of the contentions raised by the respondent Nos.1 and 2 was that for the appointment in a clear vacancy, the appellant did not possess B.Ed. qualification. The learned Single Judge considered this aspect and concluded that since the appointment of the appellant was invalid, this aspect does not require consideration being insignificant. In the facts and circumstance of the case, we endorse this view taken by the

learned Single Judge. We have minutely perused the record and proceedings. It is seen on perusal of the appointment order dated 18/08/1988 that it was signed by the then President of the respondent No.1. It was not signed by the Principal or the Secretary of the School Committee. There is no evidence on record to show that the School Committee considered the application of the appellant with others for the appointment to the post and then took the decision for his appointment. It is pertinent to note that before the appointment of the appellant, there was another untrained teacher Shri S.G. Khule, who had been appointed for teaching Commerce and Physical Education. It has come on record that the then President terminated the services of Shri Khule on 24/03/1988 and appointed the appellant being his protege. It is seen on perusal of the documentary evidence on record that the application made by the appellant was processed by the President in tearing hurry. The endorsement on the application would show that the appellant was interviewed by the President and then, he issued the order of appointment. The appointment was issued without following due process and procedure in tearing hurry. This clearly indicates that School Committee and the Principal were kept in dark. There is no iota of evidence to show that the

appellant was considered along with other applicants and thereafter, he was selected by the School Committee. There is also no evidence to show that the order was issued by the Headmaster or the Secretary with the prior approval to the appointment of the appellant by the School Committee.

17. Learned advocate for the appellant on the basis of Clause (2) of the appointment order submitted that this appointment was for a period of two years and therefore, on completion of the period of probation by a legal fiction, the appellant was confirmed in the job. We have already noted down the initial three orders. In order to appreciate the submissions advanced by the learned advocate for the appellant, we have compared the order dated 18/08/1988 with those three orders. On comparison, we noticed that the contents of all the four orders are identical. The clauses of the four orders are identical. In those three orders also, there was mention that the appellant was appointed on probation for a period of two years. It is true that in this order, there is reference of the application dated 10/08/1988 made by the appellant. Perusal of this application, further fortifies the doubt that within 8 days from the application, the appointment order was issued by the then President. The

application is marked as Annexure-R-V at page 175. The endorsements on this application were made by the President. There is no single endorsement on this application either by the School Committee or the Secretary or the Principal of the respondent No.1 - Society. It is, therefore, seen that the then President bypassing School Committee and in flagrant violation of the mandate of Section 5 of the M.E.P.S. Act and Rule 9 of the M.E.P.S. Rules issued the appointment order. It is pertinent to note that even in order dated 18/08/1988, it has been categorically mentioned that this appointment was temporary. Perusal of the Clause (2) would show that the period of temporary appointment was not mentioned. In the earlier three orders, the period of appointment was mentioned. The endorsement at the bottom on the left side of the order would show that the appointment was approved by the President. There is no mention or reference of the approval to the appointment by the School Committee, the Secretary of the School Committee or the Principal. The order was signed by the President. However, simply because of signature of the Principal on this order, it cannot be inferred that required procedure and compliance of law had gone into before granting approval to the appointment. This

appointment order, if read in juxtaposition with the earlier three orders of appointment and the fact that the mandatory procedure required under Section 5 of the M.E.P.S. Act and Rule 9 of the M.E.P.S. Rules was not followed and adhered to, has to be held as illegal appointment order. The statement made in the affidavit in reply filed by erstwhile management admitting that his appointment was in a clear permanent vacancy, therefore, cannot be accepted as a gospel truth and based on this statement, legal sanctity cannot be accorded to the appointment order, which is prima facie illegal.

18. Learned Single Judge has elaborately dealt with the submissions on the point of so called retrenchment of the appellant. It has come on record that during this period from 1987-1999, the strength of the students in Commerce faculty of the respondent No.1 was dwindling. It is seen that considering the dwindling and insufficient strength of the students, the clock hour basis appointments were issued. It has come on record that for want of students in the year 1993-1994, the Commerce faculty has been closed. Learned Single Judge has considered the provisions of Rule 26 of the M.E.P.S. Rules. Learned Judge has observed that since the termination of the appellant w.e.f. 26/06/1991 was

found valid and therefore, there was no question of retrenchment of the appellant on account of closure of the school in the year 1993-1994. In our opinion, learned Single Judge has not committed any mistake. The finding of the learned Single Judge that in view of the termination of the appellant from 26/06/1991 on the ground of invalidity, the question of resorting to the provisions of Rule 26 of the M.E.P.S. Rules would not arise is based on proper appreciation of evidence and law. Learned Single Judge has considered the decisions relied upon by the parties and on doing so, allowed the writ petition. In view of the facts and circumstance and evidence, we conclude that on the date of appointment of the appellant by the then President, there was no clear vacancy against which the respondent No.1 could have been absorbed. The evidence clearly indicates that approval was refused for want of workload and backlog. This fact would, therefore, indicate that there was no clear vacancy and as such, respondent No.1 could not have been appointed. It is, therefore, apparent that there would be no warrant to fictionally hold that the appellant was entitled to appointment on probation on 18/08/1988. We have already observed that the appointment was not made by following mandatory law and procedure. It was made by the then

President of the Society. The evidence on proper appreciation does not permit us to accept the case of the appellant. We hold that the appointment of the appellant was illegal and invalid. As the appointment is found to be invalid and illegal from the very inception, the appellant would not be entitled to the relief as sought for. Even if it is assumed for the sake of argument that the contents and the clauses of order dated 18/08/1988 satisfy the basic requirements of the format of the order, etc., in our view, the same cannot be held to be legal inasmuch as the foundation from which the order flows is itself illegal.

The applicability of the law laid down in the reported decisions relied upon by the learned advocate for the appellant and the learned advocate for the respondent Nos.1 and 2 needs to be considered in the backdrop of the finding of fact arrived at by us. First, we propose to consider the decisions relied upon by the learned advocate for the appellant.

i] In the case of Krishan Singh Vs. Executive Engineer, Haryana State Agricultural Marketing Board, Rohtak (Haryana), reported in (2010) 3 Supreme Court Cases 637, it is held that in the absence of specific stand in the reply filed by the employer that the post in which workman was working, was not sanctioned or his engagement was contrary to the

statutory rules or that he was employed elsewhere or there was no vacancy, cannot be considered. In the case before us on the basis of material facts pleaded by the parties, it has been proved that the appointment was contrary to the provisions of Section 5 of the M.E.P.S. Act and Rule 9 of the M.E.P.S. Rules. There is pleading of the material fact in the reply filed before the School Tribunal.

ii] In the case of Shamin Azad Education Society, Giroli and others Vrs. Presiding Officer, School Tribunal, Amravati and others, reported in 2014 (4) Mh.L.J. 723, it is held that the burden to prove is on the employee who come before the School Tribunal with a definite case that he was selected and appointed to fill in the permanent vacancy. If the management denies his contention then the burden is on the management to prove that the appointment was on temporary basis. In the case before the learned Single Judge, the employee was appointed strictly by following the provisions of Section 5 of the M.E.P.S. Act and Rule 9 of the M.E.P.S. Rules. There was advertisement, interview and selection by the Selection Committee for the appointment to the post. In the case on hand before us, there was no advertisement, no interview and no selection by the Selection Committee. The appointment was made by the President without authority. The appointment letter dated 18/08/1988

clearly states that the appointment was on temporary basis.

iii] In the case of Anil Dattatraya Ade Vrs. Presiding Officer, School Tribunal, Amravati and others, reported in 2003 (4) Mh.L.J. 866, the Division Bench of this Court has held that the employee gets automatic confirmation after expiry of two years probation period. It is held that the employee, who is appointed in permanent vacancy on probation acquires the status of permanency on completion of two years automatically without any specific confirmation order passed by the employer. The Division Bench of this Court in this case found that the employee therein was appointed for a period of two years on probation by following procedure laid down in Section 5 of the M.E.P.S. Act and Rule 9 of the M.E.P.S. Rules. In the case before us, the appellant was appointed on temporary basis. His appointment was not strictly in compliance with the provisions of Section 5 of the M.E.P.S. Act and Rule 9 of the M.E.P.S. Rules. The Deputy Director of Education did not continue his appointment because he found that there was backlog and due to the insufficient strength of the students and his appointment was made on clock hour basis. The Deputy Director of Education did not allow the combination of two Sections dealing with two different subjects as prayed for by the then President for granting approval to the appointment of the appellant.

iv] In the case of **Ramchandar Ramadhar Yadav Vrs. Hyderabad (Sind) National Collegiate Board and another**, reported in **2006 (2) Mh.L.J. 530**, the employee was appointed against clear permanent vacancy of 'Peon' and not for a fixed period. It is held that mere use of the word 'temporary' in the appointment order would not make the appointment temporary. In this case before the learned Single Judge, the employee was appointed against the permanent vacancy. There was no issue of backlog of the backward class candidates as well as non-compliance of Section 5 of the M.E.P.S. Act and Rule 9 of the M.E.P.S. Rules. The appointment was not made for a fixed period.

v] In the case of **Trimurti Balak Mandir Shikshan Sanstha, Aurangabad and another Vrs. Vithabai Bhikan Desale and others**, reported in **2017(1) Mh.L.J. 90**, there was oral termination of the teacher, who had worked for more than 5 years. The appointment order was issued under Rule 9 (5) of the M.E.P.S. Rules and that too in a prescribed form under Schedule D of 1981 Rules. The appointment order was neither withdrawn nor it was mentioned that it was issued by incompetent authority. In the case before us, the appointment was not made by the competent authority. The President of the society had no authority to appoint the appellant. The appointment of the appellant was clothed with the legal flaws.

vi] In the case of Anil s/o Govindrao Korde Vrs. Siddheshwar Krida Mandal, Sillod and others, reported in 2016(6) Mh.L.J. 933, the management had raised the issue of unlawful nature of the appointment after 10 years from the date of appointment. The Education Officer had granted approval holding that the appointment was legal. The facts of the case of the appellant are totally different. His appointment was illegal since very inception.

vii] In the case of Ramkrishna Chauhan Vrs. Seth D.M. High School and others, reported in 2013(2) Mh.L.J. 713, learned advocate for the appellant has relied upon the observations made in Paragraph Nos.20 and 24 of the Full Bench decision. In our view, the observations made in these two paragraphs do not support the submission advanced by the learned advocate. In this case, the Full Bench of this Court has held that the appointment of employee if made on temporary basis, then it is not open to the School Tribunal to assume as a fact that the appointment was made against clear and permanent vacancy and therefore, the same is deemed to be on probation. It is held that the terms and conditions of the letter of appointment, if expressly provided that the appointment is on temporary basis and for a limited term, the same cannot be discarded. In the case before the Full Bench, the employee was duly qualified and was appointed as a Full Time Assistant Teacher. In our

view, the proposition of law laid down in this Judgment is of no help and assistance to the case of the appellant. On facts, learned Single Judge found that appointment of the appellant since very inception was illegal. On consideration of the entire evidence, we do not find any fault with this finding. We have recorded a finding in the earlier part of the Judgment that the appointment of the appellant dated 18/08/1988 was in gross violation of the provisions of Section 5 of the M.E.P.S. Act and Rule 9 of the M.E.P.S. Rules.

19. Learned advocate for the respondent Nos.1 and 2 relied upon the unreported decision in the case of Union of India and another Vrs. Raghuwar Pal Singh in Civil Appeal No.1636/2012 dated 13/03/2018. In the case at hand, the appointment was made by the President without authority and as such, the said appointment is invalid. In our view, therefore, the law laid down in this decision is squarely applicable to the facts of this case. In this case before the Hon'ble Supreme Court of India the appointment to the post of Veterinary Compounder was made by one H. S. Rathore, who was not authorized to do it. The Hon'ble Supreme Court of India has held that in absence of prior approval of the Competent Authority, the Director Incharge could not have hasten the issuance of appointment letter. It is held that

such act of commission and omission of the then Director Incharge would, therefore suffer from vice of lack of authority and nullity in law. The Hon'ble Supreme Court of India has held that the appointment order issued by a person not authorized to do the same would be nullity and not an irregularity.

20. Upon bestowing the thoughtful consideration to the facts and law, we conclude that the decisions relied upon by the learned advocate for the appellant on facts are not applicable to the case of the appellant. The decision relied upon by the learned advocate for the respondents is a direct judgment on the point and as such, applicable to the facts of the case. Learned Single Judge while allowing writ petition filed by the respondent Nos.1 and 2 made threadbare analysis of the evidence and law and found that the appointment of the appellant was invalid and void *ab initio*. On considering the material placed on record afresh, we have no hesitation to endorse our agreement with the view taken by the learned Single Judge. In view of the facts and circumstances and the law, the view taken by the learned Single Judge is the only possible view in this case. We do not see any substance in the appeal. The appeal, therefore, deserves to be dismissed. Hence, the following order :

ORDER

- I] The Letters Patent Appeal stands dismissed.
- II] In the peculiar facts and circumstances of the case,
the parties shall bear their own costs.

(G. A. SANAP, J.)

(A.S. CHANDURKAR, J.)

Choulwar