

THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 7000 OF 2019

PETITIONERS:
 (Ori. Respondent
 No.1,2 & 4)

- 1] Sant Sadaram Shikshan Sanstha,
Kaudanyapur, Tq. Tiwasa, through
its President.
- 1A] Sant Sadaram Shikshan Sanstha,
Kaudanyapur, Tq. Tiwasa, through
its Secretary.
- 2] Ashok Pundlikrao Isal,
Vice President, Sant Sadaram Shikshan
Sanstha, Kaudanyapur, Tq. Tiwasa,
Dist.Amravati.

...VERSUS...

RESPONDENTS:
 (Ori. Appellant)

- 1] Vinayak Ambadas Kadu,
Aged 52 years, Occ. Business,
Occ. Business, R/o. Kaudanyapur, Tq.
Tiwasa, Dist. Amravati.
- 2] Education Officer, Zilla Parishad,
Amravati, Tq. And Dist. Amravati.

 Mr. M.G.Bhangde, Senior Advocate assisted by Mr. Shejal S. Sarda, Advocate for
 petitioners.
 Mr. P.S.Patil, Advocate for respondent No.1
 Ms. Tajwar Khan, AGP for Respondent No.2

CORAM : AVINASH G. GHAROTE, J.
DATE : 23/12/2021.

1] Heard Mr. M.G.Bhangde, learned Senior Counsel for the
 petitioners, Mr. P.S. Patil, learned counsel for Respondent No.1 and

Ms. Tajwar Khan, learned Assistant Government Pleader for Respondent No.2.

2] **Rule.** Rule made returnable forthwith. Heard finally by consent of the learned counsel appearing for the parties.

3] The petition challenges the judgment dated 31.8.2019 passed by the learned School Tribunal, whereby the termination order dated 5.10.2011, issued to Respondent no.1 has been quashed and set aside.

4] Mr. Bhangde, learned Senior Counsel submits :

4.1] that the appointment of Respondent no. 1 on 15.6.2000 itself was illegal, inasmuch as no advertisement was issued prior to appointment of Respondent no.1. It is also submitted that Respondent no.1 was a part of the management, in as much as, he was the Joint-Secretary of the petitioner no.1- Institution and therefore, was a person who was conversant with the legalities and formalities relating to the appointment. He further submits that the appointment of the Respondent no.1 was clearly a backdoor entry,

considering that there is nothing on record to indicate the existence of a duly approved roster, regarding the vacancy to which the Respondent no.1 was appointed from the open category. Relying upon Rule 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules, 1981 (for short, the MEPS Rules”, hereinafter), learned Senior Counsel submits that the procedure prescribed for the appointment of teaching staff has not been followed at all. He submits that the issuance of an advertisement is an integral part of the appointment process, without following which the process would not be complete and the appointment would not be legal. It is further submitted that since the appointment itself was illegal, there was no question of holding any enquiry in the matter, as an enquiry would be necessary only if the appointment is legal in all aspects.

4.2] It is further submitted that there cannot be any estoppel against the requirement of a statute, and that there are no pleadings of estoppel in the appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short, “the MEPS Act, hereinafter).

4.3] It is further contended that the order of termination does not spell out that the termination was on account of any misconduct. The order of termination, is in pursuance to the Resolution No.3 of the Managing Committee held on 27.11.2011, which records that the appointment of Respondent No. 1 was done without any advertisement, nor following any of the procedure required for regular appointment and the Respondent No.1, who was the then Joint Secretary of the petitioner no.1, had got himself appointed, when the school being run by the petitioner No.1 was a non-aided school. It was therefore resolved that the services of the Respondent No.1 be terminated on the above grounds. It is thus contended that the question of termination on account of any misconduct thereby requiring an enquiry to be conducted did not arise at all.

4.4] It is submitted that the Tribunal in rendering a finding that the termination was on account of a misconduct and therefore requiring an enquiry had clearly misread the resolution dated 27.11.2011 passed by the Managing Committee, as well as the order of termination, perusal of both of which would indicate that the

termination was not on account of any misconduct alleged to be done by the Respondent No.1, but was only on the ground that the initial appointment of Respondent No.1 was illegal on account of absence of any advertisement and the required procedure not having been followed.

4.5] It is submitted that even a show-cause notice before terminating the Respondent No.1 was not necessary, as the requirement therefor would be applicable only in case of a legal appointment, as against which the appointment of Respondent No.1 was wholly illegal, nor was there any requirement of conducting departmental enquiry.

4.6] Reliance for the above proposition is placed upon:

- (1) *Ranchodlal Vandravandas Patvari and anr. vrs. The Secretary of State for India in Council, ILR 1910 (35) Bom 182*
- (2) *Chhaganlal Keshavlal Mehta vrs. Patel Narandas Haribhai, (1982) 1 SCC 223*
- (3) *Ravinder Sharma (Smt.) and another vrs. State of Punjab and ors (1995) 1 SCC 138*
- (4) *Nagendra Chandra and others vrs. State of Jharkhand and others (2008) 1 SCC 798*

- (5) *State of Bihar and ors. vrs. Chandreshwar Pathak, (2014) 13 SCC 232*
- (6) *Priyadarshini Education Trust and ors vrs. Ratis (Rafia) Bano d/o Abdul Rasheed and ors, 2007 (6) Mh.L.J. 667*
- (7) *Chandramani Devraj Tiwari vrs. Secretary Smt. R.B.Tiwari, Sanskrutik Kendra and others, 2008 (3) Mh.L.J. 274*
- (8) *Shri Sant Gajanan Maharaj Bahuuddeshiya Shikshan Prasarak Mandal, Khaparwada, through its President and ors vrs. Devendra Bhagwani Matode and others (Letters Patent Appeal No.360/2008 in Writ Petition No.1727/2007, decided on 04/08/2017)*
- (9) *State of U.P. and others vrs. U.P. State Law Officers Association and others, (1994) 2 SCC 204*
- (10) *Union of India and another vrs. Raghuwar Pal Singh, (2018) 15 SCC 463*
- (11) *Binod Kumar Gupta and others Vs. Ram Ashray Mahoto and others, (2005) 4 SCC 209*
- (12) *State of Bihar and others vrs. Kirti Narayan Prasad, (2019) 13 SCC 250*
- (13) *Gopinath and another vrs. Harischandra (Dead) By Legal Representatives and others, (2019) 16 SCC 245*

5] Mr. Patil, learned counsel for Respondent No.1 submits :

5.1] that there was an *inter se* dispute between the management due to the appointment of one Ms. Rupali Kale, who was the daughter-in-law of the then Secretary of the petitioner No.1,

in which litigation since Respondent No.1 had opposed the said appointment, which results in the Education Officer cancelling her approval on 22.3.2010 and resulted in the termination of the said Ms. Rupali Kale on 15.4.2010, and the dismissal of Appeal No. 32/2010 by the learned School Tribunal, the impugned order of termination of Respondent No.1 came to be passed.

5.2] He invites my attention to the resolution dated 15.6.2000 (page 21) passed by the petitioner, regarding the appointment of Respondent No.1, and the letter of appointment dated 15.6.2000 itself (page 23) and the subsequent documents from page 25, 27, 29, 31 and 34, page 34 - approval of the appointment of Respondent No.1, page 38 - Resolution of petitioner No.1 regarding regular appointment of Respondent No.1, page 40 - order of appointment of Respondent No.1 as a regular Headmaster by the petitioner No.1 and page 43 – the order of approval by the Education Officer, which indicate the joining of Respondent No.1, as well as continuation thereof, which according to him, indicate a regular appointment.

5.3] Further reliance is placed upon Section 4(6) of the MEPS Act, to contend that there was a prohibition upon the management, from terminating an employee without following the provisions of the Act and the Rules in that behalf. Specific stress is laid upon Rule 28 (1) of the MEPS Rules. He submits that the MEPS Act does not differentiate between appointment made on a temporary or probationary basis, for which reliance is placed upon Section 2(7) of the MEPS Act. He further submits that the plea of estoppel was specifically raised before the learned School Tribunal. He further submits that there is no specific provision in Rule 9 of the MEPS Rules for issuance of an advertisement.

5.4] A further plea is raised that the petitioner No.2 before the learned School Tribunal had made allegations against the Petitioner No.1A and the very fact that he has now joined hands with the petitioner No.1 in filing the present petition, would indicate a conspiracy to remove the Respondent No.1. It is further submitted that in the year 2000 when the Respondent No.1 was appointed, since the school was on non-grant basis and without any recognition, there was no obligation upon the petitioner No.1 to have issued advertisement or followed any procedure in the matter

of any appointment of the teaching staff. He therefore justifies the judgment passed by the learned School Tribunal.

5.5] Reliance in support of the aforesaid submissions is placed on ;

- (1) *Anil s/o Govindrao Korde vrs. Siddheshwar Krida Mandal, Sillod and others*, 2016 (6) Mh.L.J. 933
- (2) *Union of India and others vrs. Kishorilal Bablani*, AIR 1999 SC 517
- (3) *Roshni Devi and others vrs. State of Haryana and others*, (1998) 8 SCC 59
- (4) *Buddhi Nath Chaudhary and others vrs. Abahi Kumar and others* (2001) 3 SCC 328
- (5) *Trimurti Balak Mandir Shikshan Sanstha, Aurangabad and anr. vrs. Vithabai Bhikan Desale and others*, 2017 (1) Mh.L.J. 90
- (6) *Harischandra s/o Panditrao Gitte vrs. Shridhar Gangaram Gitte and others*, 2007 (1) Mh.L.J. 837
- (7) *Mahatma Gandhi Krushak Shaikshanik Sanstha, Wadoda vrs. Anant s/o Narayanrao Bokde and ors.*, 2011(2) Mh.L.J. 214
- (8) *Jagdamba Education Society, Nagpur vrs. Rajendra s/o Baburao Golhar and ors.*, 2009 (2) Mh.L.J. 522
- (9) *Dipti Prakash Banerjee vrs. Satvendra Nath Bose National Centre for Basic Sciences, Calcutta and others*, 1999 LAB.I.C. 1114

***(10) Jaswant Singh and others vrs. State of M.P and others,
(2002) 9 SCC 700***

6] Mr. Bhangde, learned Senior Counsel in rebuttal in reference to the documents at pages 23 to 43, relied upon by Mr. Patil, learned counsel for Respondent No.1 submits that those cannot be relied upon to establish any plea of estoppel. Further relying upon Section 4(6) of MEPS Act, he submits that the provision would apply only to employee who was appointed after following due procedure of law and not to a person whose appointment was in contravention to the procedure, in which case the appointment itself would be *void ab initio*.

7] Though the MEPS Act, does not contemplate the issuance of an advertisement for advertising the vacancy by inviting applications for its filling, the requirement of such an advertisement has been read into the Act by the learned Division Bench of this Court, in ***Priyadarshani Education Trust*** (supra) in the following words:

“11.....We are unable to appreciate, much less accept, such an argument. Referring to proviso to Sub-section (1) of [Section 5](#) of the Act, it is evident that, as soon as there is vacancy, the management is required to communicate with the Education Officer, Zilla Parishad. The vacancy is to be filled in,

from the list of surplus persons maintained by the Education Officer. This is the first indication of control of the State over the recruitment and appointment of staff, even of private schools. Even on reference to Sub-rule (3) of rule 9, the candidate eligible for appointment and desirous of applying for such post, is required to apply in writing, by giving full details. We are unable to visualise a possibility of deserving candidate knowing about the vacancies in any private schools, unless the school invites applications by advertisement. The persons, who may learn about vacancies without advertisement, may only be kith and kins or those in close contact with the management or at the most staff members. If argument of Advocate Shri Kazi is to be accepted, it will be tantamount to accepting that rule 9 is drafted in such a manner as to promote nepotism, so far as appointments of open category candidates to teaching and non-teaching posts in private schools are concerned. If the argument of Advocate Shri Kazi is to be accepted, rule 9 will have to be read in a fashion, where reserved category candidates are required to enter the service by competing amongst themselves, but an open category candidate may be in a position to seek an appointment without competing. Legislature could not have intended to prescribe a manner of recruitment which would discriminate between reserved and un-reserved categories in respect of manner in which they can seek appointments. A legislation making it easier for a reserved candidate, may be justified, in view of Article 15(4) of the Constitution. But, a reverse position cannot be justified by any line of argument.

Article 14 guarantees equality before law and [Article 16](#) gives equality of opportunity in the matter of public employment. [Article 16\(1\)](#) reads :

“16. Equality of opportunity in matters of public employment. (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.”

In case we are to accept the submission as advanced by Advocate Shri Kazi, Rule 9 not only creates a discrimination in the recruitment and appointments of candidates between reserved and unreserved categories (making it more difficult for the reserved categories), but it also denies equal opportunity for all citizens desirous of seeking employment/appointment. In the absence of any advertisement, only those favoured by nepotism will be able to seek employment/appointments at the cost of all equally placed and desirous candidates, who are ignorant of such vacancies. Any procedure for recruitment/appointment, which does not afford equal opportunity to all eligible and deserving candidates to compete for seeking appointment and

employment, must be seen and termed as unconstitutional as being violative of Articles 14 and 16(1).

On reference to Rule 9 Sub-Rule 2, it can be seen that appointments of teaching and non-teaching staff are required to be done by the School Committee and only the short term appointments in leave vacancies, of a duration not exceeding three months are permitted to be done by the Head, if so authorized by the School Committee.

In this context, we may also refer to the text of Sub-Section 2 of Section 5, which is already re-produced hereinabove. From the opening part "every person appointed to fill in permanent vacancy shall be on probation for a period of two years...", it is evident that once a person is selected in the manner prescribed and duly appointed, the Management or the School Committee has no option. Such a person must be appointed on probation. If there is a permanent vacancy and if a person duly qualified is selected in the manner prescribed and then duly appointed, the Management has no choice or option to appoint him for a limited period such as one academic year or shorter than that.

Thus, although Sub-rule (3) of rule (9) does not specifically speak of requirement of publication of vacancies by an advertisement and inviting applications from candidates eligible and desirous of seeking appointment, as Sub-rule (8) speaks for the purpose of filling up the vacancies reserved under Sub-rule (7), requirement of such an advertisement must be read within the provisions for the reasons discussed hereinabove and which may be summarized, at the cost of repetition as follows."

(emphasis supplied)

Similar view has been taken in ***Shri Sant Gajanan Maharaj Bahuuddeshiya Shikshan Prasarak Mandal & ors.*** (supra) which holds that there is no right to a post, if appointment is not in pursuance of an advertisement and by participation in open competitive selection process and ***Chandramani Devraj Tiwari*** (supra), which holds that in absence of an advertisement, the

benefit of deemed permanency under Section 5(2) of the MEPS Act, could not be claimed and even if presuming that there was some illegality committed by mutual consent that could not in itself confer any legal sanction to the appointment.

8] In ***Nagendra Chandra and ors.*** (supra), the Hon'ble Apex Court while considering the issue of appointment made in infraction of the recruitment rules in the light of advertisement being required to be issued, held as under;

“9. In view of the foregoing discussion, we have no option but to hold that if an appointment is made in infraction of the recruitment rules, the same would be violative of Articles 14 and 16 of the Constitution and being nullity would be liable to be cancelled. In the present case, as the vacancies were not advertised in the newspaper, the appointments made were not only in infraction of Rule 663(d) of the Bihar Police Manual but also violative of Articles 14 and 16 of the Constitution, which rendered the appointments of the appellants as illegal; as such the competent authority was quite justified in terminating their services and the High Court, by the impugned order, was quite justified in upholding the same”.

9] In ***Chandreshwar Pathak*** (supra) while considering that the appointment of the petitioner therein was in absence of an advertisement or selection process, in spite of the fact that the petitioner had continued in service for more than 15 years, the Hon'ble Apex Court having found that the appellants/employees were backdoor appointees, employed without any advertisement or

selection process, held that the termination of such employees, was justified.

10] It is in the above background, it will have to be considered as to whether the appointment of Respondent No.1 who was admittedly a part of the management inasmuch as the Respondent No.1 was the Joint Secretary of the Petitioner No.1 at the relevant time when the appointment order dated 15.6.2000, was issued in his favour, was by following the due process.

11] It is an admitted position on record that before issuance of the appointment order of Respondent No.1, no advertisement whatsoever was issued regarding the vacancy to which Respondent No.1 was appointed. Neither was the vacancy intimated to the Education Officer as is required by the proviso to Section 5 (1) of the MEPS Act, nor any selection committee was constituted, as is required by Rule 9(2) of the MEPS Rules. Mr. Patil, learned counsel for Respondent No.1 has been unable to point out that any advertisement was issued prior to filling up of the vacancy to which

Respondent No. 1 was appointed, nor the constitution of a selection committee as is required by Rule 9 (2) of MEPS Rules in this regard.

12] It is therefore apparent that the appointment of Respondent No. 1, in absence of the aforesaid, will have to be held to be a backdoor appointment by the management/Petitioner No.1, which time and again, as indicated above, has been disapproved by the Hon'ble Apex Court as is spelt out by what has been held in ***Nagendra Chandra*** and ***Chandreshwar Pathak*** (supra).

13] It is also a trite position of law that there cannot be any estoppel against an illegal appointment, which is the position as is spelt out in ***Ravinder Sharma*** (supra), which holds that where the appointment was against Regulation No.7 prescribing the educational qualifications to be satisfied for the appointment, any appointment made in contravention thereto would not attract the question of estoppel. In ***Chhaganlal Keshav Mehta*** (supra) it has been held that for an estoppel to be attracted, it must be demonstrated that the person claiming the benefit of estoppel was not aware of the true state of things. Similar is the position laid

down in *Ranchodlal Vandravandas Patvari*, which holds that when both the parties are equally conversant with the true state of facts, it was absurd to refer to the doctrine of estoppel (relying upon the observations of *Sir Charles Farran in Vanapa vrs. Narsapa*). In the instant case, since the respondent no.1 was admittedly the Joint Secretary in the management of Petitioner No. 1 at the relevant time, he could not have been ignorant of the process of appointment, namely that the appointment could only have been done by issuance of an advertisement, constitution of a selection committee under Rule 9(2) of MEPS Rules, selection by the Selection Committee, on the basis of a competitive position due to the publication of advertisement only in pursuance to which Respondent No. 1, in case he was so selected, could an order of appointment be issued in his favour. It would therefore be necessary to hold that the question of estoppel would not arise in the present case altogether, considering the peculiar facts that the Respondent No.1 was a part of the management at the relevant time when he got himself appointed to the post of Assistant Teacher which was vacant at that particular point of time.

14] The contention that since in the year 2000 the petitioner-school was not receiving any grant-in-aid and therefore was not subject to the rigors as contained in the MEPS Act and the Rules, does not assist the case of Respondent No.1, in view of what has been held in ***Priyadarshani Education Trust*** (supra) where after considering this position, the learned Division Bench of this Court, has held as under :

“12.In view of these elements, even if an educational institution may not be “State” or “instrumentality of State” or “other authority” as contemplated by Article 12 of the Constitution, it will not be in a position to act as an autonomous body, having no responsibility to ensure protection of fundamental rights conferred by Articles 14 and 16 upon the citizens. The educational institutions shall not be able to treat themselves at par with private employer who pays salaries and allowances from his own pockets, even when initially the school is being run by the management with its own expenses, but in anticipation of receipt of grants-in-aid from 4th academic year as per permission to run the school is granted. In view of the provisions as contained in Section 5 of the MEPS Act and Rule 9 of MEPS Rules read with Articles 14 and 16 of the Constitution and the observations of the Hon’ble Apex Court in the reported judgment which guide us, we draw the following conclusions :

(i) “duly appointed, in the manner prescribed” would be an appointment of a person who is eligible (qualified for the post) for appointment, who is selected by due process of selection i.e. by competition amongst all eligible and desirous candidate, and who is appointed on a permanent vacant post. In other words, inviting applications, as also holding of screening tests, enabling all eligible and desirous candidates to compete for selection and appointment, is a must.

(ii) Once an eligible candidate (duly qualified as required) is selected by selection process as above, for filling in a permanent vacancy, there is no option for the management and it is obligatory on it to appoint such person on probation for a period of two years. It is neither open for the management to

appoint him for one academic year or any period shorter than two years probation period, nor it is open for Education Officer to grant approval for such shorter period.[in fact, in view of requirement as in clause (i) above, the process of grant of approval by Education Officer should be with examination of selection process and its validity.]

(iii) The candidate thus selected with due process and appointed on probation shall enjoy status of deemed permanency on completion of two years, unless extension of probation is informed, or termination is ordered.

(iv) The appointment of a person not belonging to reserved category, in a post reserved for a particular category, because the candidate of that category is not available, shall be absolutely temporary and on an year to year basis, governed by sub-rule (9) of Rule 9, although in a permanent vacancy.”

15] It is further material to note that Section 3 of the MEPS Act makes the provision of the Act applicable to all private schools in the State of Maharashtra whether receiving grant-in-aid from the State Government or not, in view of which even if an institution is not receiving any grant-in-aid from the State, it cannot be heard to say that the appointments can be made dehors the provisions of the MEPS Act and the Rules framed thereunder and what has been enunciated by the Hon’ble Apex Court and this Court in various judicial pronouncements. In ***U.P. State Law Officers Association and ors.*** (supra), while considering the mode of appointment of lawyers for the public bodies, the Hon’ble Apex Court held that those who come to be appointed by an arbitrary procedure can hardly complain if the termination of their appointment is equally arbitrary

and thus those who come by the backdoor have to go by the same door. In *Raghuwar Pal Singh* (supra) it was held that if the appointment letters were a nullity, the officer issuing them, having no authority, the question of following the principles of natural justice did not arise at all. In *Binod Kumar Gupta and ors.* (supra) it was held that while rejecting the submission of the appellants that they had been validly appointed, the Hon'ble Apex Court, declined to accede to their prayer to continue in service, observing that having regard to the facts of the case as have emerged, it was of the opinion that the Court cannot be called upon to sustain an obvious disregard of the law and principles of conduct, according to which every judge and anyone connected with the judicial system are required to function and if the appellants were allowed to continue in service merely because they had been working in the posts for the last 15 years it would be guilty of condoning a gross irregularity in their initial appointment. Further in *Kirti Narayan Prasad* (supra), the Hon'ble Apex Court reiterated the position as stated in *State of Orissa and another vrs. Mamata Mohanty, (2011) 3 SCC 436* that once an order of appointment itself had been bad at the time of initial appointment, it cannot be sanctified at a later stage

and further held that since the appointment of the petitioners was *void ab initio*, they could not be said to be the civil servants of the State and therefore, holding disciplinary proceedings envisaged by Article 311 of the Constitution or under any other disciplinary rules did not arise.

16] In **Anil Govindrao Korde** (supra), relied upon by Mr. Patil learned Counsel for the respondent no.1, it was found that the appointment of the petitioner as an Assistant Teacher was after following the due procedure of law from 25% graduates quota, in which after completion of probation of two years, the petitioner was granted permanency which was approved by the Education Officer. The appointment of the petitioner therein was also declared as valid by the Education Officer by his order dated 25.3.2009 and the appointment of Respondent No.4 therein, who was the son of the President of Respondent No.1-management was declared as invalid by the said order, which resulted in the management terminating the services of the petitioner by the order dated 22.4.2009, without affording opportunity of hearing, challenging which the appeal filed by the petitioner came to be dismissed, accepting the plea regarding unlawful appointment of the petitioner and in view of the position

that the procedure for termination as prescribed in the MEPS Rules having not been followed and the termination being found to accommodate Respondent No.4 who was the son of the President of Respondent No.1-management. No doubt that in **Anil Govindrao Korde** (supra) and **Vithabai Bhikan Desale**, (supra) it has been held by the learned single Judge of this Court, that an employer would be estopped from raising the ground of illegal appointment after 6 years (in **Desale's** case) and 10 years (in **Anil Korde's** case), however, that was in the peculiar facts of the case. In **Anil Govindrao Korde** (supra), it was noticed that the appointment of the petitioner was legal and valid as found by the Education Officer by his order dated 25.03.2009 by overruling each and every objection raised in that regard by the respondent No.4, who was a candidate being supported by his father, the President of the Institution. A perusal of the judgment in **Anil Govindrao Korde** (supra) would indicate that though the judgments of the Hon'ble Apex Court in **Nagendra Chandra** and **Priyadarshani Education Trust** (supra) were brought to the notice of the learned Court, the reliance upon the same was held to be misconceived in the facts of the said case, considering that the Court had on the facts availing therein had rendered a categoric

finding that the termination of the petitioner therein was solely with an intention to accommodate the Respondent No.4, who was the son of the President of the Institution. **Anil Govindrao Korde** (supra) therefore disapproves of a backdoor entry and nepotism in the matter of appointment of the kith and kin of the management. The position in the present petition is somewhat akin to that in **Anil Govindrao Korde** (supra), in as much as the Respondent No.1 was himself in the managing committee as the Joint Secretary at the relevant time and therefore without following the due process of issuance of an advertisement, constitution of selection committee and interview had got himself appointed as a Physical Training Teacher and therefore **Anil Govindrao Korde** (supra) in fact goes against the present respondent no.1, on the above ground. Though in **Jagdamba Education Society** (supra) relied upon by the learned counsel for Respondent No.1, which is by a learned Single Judge of this Court, it has been held that there was no requirement of issuance of an advertisement in the MEPS Act, however considering that the learned Division Bench of this Court in **Priyadarshani Education Trust** (supra) had held the requirement of an advertisement to be read into the provision of the statute, the same

was clearly binding upon the learned Single Judge, apart from which one of the grounds for holding so was that the Division Bench gave much emphasis on the procedure to be adopted for the purpose of selection and recruitment because the school involved in the matter was grant-in-aid school and was getting grant-in-aid from the Government and therefore was bound to make selection after following due procedure and the observations of the learned Division Bench could not be held to be applicable to a non-aided school (para 19), which clearly was in ignorance of Section 3 of MEPS Rules, which specifically applies the MEPS Act to all private schools in the State of Maharashtra, whether receiving a grant-in-aid from the State Government or not. It therefore appears that in view of Section 3(1) of the MEPS Act, the distinction sought to be carved out by the learned Single Judge in *Jagdamba Education Society* (supra) was clearly not available, in view of which, I prefer to rely upon the dictum of the Honble Division Bench as held in *Priyadarshani Education Trust* (supra). *Anant Narayan Bokde* (supra) relied upon by learned counsel for Respondent No.1 is equally not attracted, in my considered opinion, for the reason that it holds that in case if there is any defect in the appointment of an

employee, it would be open for the management to revoke the appointment and not termination of service on the premise that the selection of the employee therein was in pursuance of the public advertisement and after undergoing regular selection process. Since ***Harischandra Panditrao Gitte*** (supra) relied upon by the learned counsel for Respondent No.1 has been reversed by the Hon'ble Apex Court in ***Gopinath and another*** (supra) I, do not propose to deal with the same. In so far as ***Roshani Devi and others*** (supra) relied upon by learned counsel for Respondent No.1 is concerned, as rightly contended by Mr. Bhangde, the learned Senior Counsel, the same is a judgment on facts and does not lay down any law as is evident, a perusal of what has been stated in para 6 of the said judgment, besides which ***Nagendra Chandra*** (supra) which is by a larger Bench was not noticed therein.

17] The contention that the entire action has been initiated by petitioner no.1 in view of the siding of Respondent No.1 by the faction which was opposing the appointment of one Rupali Kale does not appeal to me for the reason that whatever be the factions in the management, however, any appointment has to be done after

following the due process of law, which has not been so done in the present case.

18] The further contention that since Section 2 (7) of the MEPS Act does not make any distinction between appointments made on a temporary or probationary basis, the termination was in violation of Section 4 (6) of the MEPS Act read with Rule 28 (1) of the MEPS Rules by Mr. Patil, learned Counsel for the Respondent no.1, is answered by what has been held by the Hon'ble Apex Court in ***Raghuwar Pal Singh*** (supra) holding that if the appointment itself is invalid, there was no question of any enquiry or compliance with the provisions of natural justice.

19] The reliance upon Resolution dated 15.6.2000, regarding the appointment of the Respondent no.1 and all consequent documents therein such as the appointment letter dated 15.6.2000, joining and subsequent approval by the Education Officer, all have to be considered in the background of the invalidity of the appointment of the Respondent no.1, as discussed, in paras 11 and 12 above and since the appointment of the Respondent no.1

itself, was the backdoor entry, these documents, are of no assistance to the arguments advanced by Mr. Patil, learned Counsel for the Respondent no.1.

20] In *Kishorilal Bablani* (supra) relied upon by Mr. Patil, learned counsel for the Respondent no.1, the issue whether, the initial appointment, was contrary to the rules and regulations and was a backdoor entry, was not under consideration by the Hon'ble Apex Court. What was under consideration was the placement of the candidate in Class-II post due to wrong notification of vacancies in the corresponding year, due to which the Central Administrative Tribunal, had by correcting the error directed that the placement of the appellant therein, be made in Class-I post, since the number of vacancies were incorrectly notified and had they been correctly notified, the appellant therein would have been appointed in Class-I post itself, however, considering the delay of more than ten years, in challenging the same, the Hon'ble Apex Court held that on an equitable basis, the position should be not disturbed. The position therefore which fell for consideration was quite different than from which is extant in the present matter, where admittedly, the respondent no.1 is a backdoor entry.

21] ***Buddhi Nath Chaudhary and others*** (supra) was a case, in which the appointment was made pursuant to a selection, which is not the position in the present matter, due to which on this ground itself the same would not be applicable.

22] In so far as the reliance by Mr. Patil, learned Counsel for the Respondent no.1 on ***Dipti Prakash Banerjee*** (supra) to contend that an enquiry ought to have been held before the termination is concerned, it would be material to note that ***Dipti Prakash Banerjee*** (supra) is a case, where a legally appointed probationer was terminated by making allegations in a separate communication regarding her conduct and performance, as against which, in the instant case, the termination, as is indicated by the Resolution, is merely on the ground, that the due process was not followed before the appointment, which is not a stigma at all and therefore, there was no necessity of holding an enquiry.

23] In so far as ***Jaswant Singh and others*** (supra) is concerned, there was a specific provision, contained in Section 83 (2) of the M.P. Panchayat Adhiniyam, 1981 that the Collector, could not

have passed an order of cancellation of appointment under Sub Section 1 of Section 83 of the M.P Panchayat Adhiniyam, 1981 without giving an opportunity of being heard to the person whose appointment was being cancelled, and therefore is of no assistance to the argument advanced by Mr. Patil, learned Counsel for the Respondent no.1.

24] Considering the discussion made above, I am of the considered opinion that the appointment of Respondent No. 1 which was without issuance of the advertisement, without the constitution of a selection committee and without following the due process, cannot be sustained, since the same can clearly be said to be a backdoor entry, considering that the Respondent No.1 was the then Joint Secretary of petitioner No.1-management. The impugned judgment which ignores the position that Respondent No.1 was appointed without following the due process of law cannot be sustained, as being a Tribunal it is duty bound to maintain the magnanimity of law and whatever length of service may have been put up by a person who has managed to get a backdoor entry into the employment, cannot be permitted to continue the same. The resolution dated 27.11.2011 categorically records that the

appointment of Respondent No.1 was without following any process of law merely because the Respondent No.1 was the Joint Secretary in the Management, and the action taken in pursuant therefor by terminating the petitioner No.1 is clearly supported by ***Shri Sant Gajanan Maharaj Bahuuddeshiya Shikshan Prasarak Mandal & ors.*** (supra), ***U.P. State Law Officers Association and others*** (supra) and ***Rahuwar Pal Singh*** (supra).

25] The impugned judgment therefore, in my considered opinion, cannot be sustained and is hereby quashed and set aside and the appeal filed by Respondent No.1 is accordingly dismissed. No order as to costs. Rule is made absolute in the aforesaid terms.

(AVINASH G. GHAROTE, J.)