

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

WRIT PETITION NO. 4570 OF 2018

Shri Rangdas Swami Shikshan
Vikas Mandal and Ors.

...Petitioners

V/s.

Shri. Mutyal Vilas Rambhau
and Ors.

...Respondents

Mr. N.V. Bandiwadekar, Senior Advocate i/by. Ms. Ashwini N.
Bandiwadekar, for the Petitioners.

Mr. Murlidhar L. Patil, for Respondent No.1.

Mrs. Vaishali Nimbalkar, AGP for Respondent Nos.2 and 3.

CORAM : SANDEEP V. MARNE, J.

Judg. Reserved On : 27 September 2023.

Judg. Pronounced on : 6 October 2023.

JUDGMENT :

1. Petitioner-Management has filed this petition challenging the judgment and order dated 17 February 2018 passed by the School Tribunal, Pune in Appeal No.08/2011. By that order, the Tribunal has set aside the termination order dated 10 January 2011 and has directed the Petitioner-Management to reinstate Respondent No.1 on his original post of Assistant Teacher alongwith backwages and consequential benefits.

2. Briefly stated, facts of the case are that Petitioner No.1 is a Trust which runs 15 secondary schools and one secondary (post basic) Ashram School. Petitioner No.2 is Secondary School and Petitioner No.3 is the post-basic Ashram School, both being managed by Petitioner No.1-Trust. The schools are governed by the provisions of Maharashtra Employees of Private Schools Act, 1977 (**Act of 1977**) and Maharashtra Employees of Private Schools Rules, 1981 (**Rules of 1981**).

3. During the year 1988-89, there were twelve vacancies of teachers in the schools managed by Petitioner No.1 in Pune and Ahmednagar Districts and as per the Roaster, there was backlog of reservation in Scheduled Tribe category. On 4 April 1988, Petitioner No.1 sent a requisition to the Managing Director of Maharashtra State Co-operative Tribal Development Corporation, Nashik stating that the Management intended to fill up 12 posts of teachers with various qualifications through S.T. category in June 1988. The Corporation was requested to send a list of eligible S.T. candidates. Similar communication was also addressed to various other authorities such as Tribal Development Department, Integrated Tribal Development Project etc. The Project Officer of Integrated Tribal Development Project, District-Ahmednagar stated that no candidates holding qualifications of B.Sc, B.Ed, B.A.,B.Ed and M.Com, B.Ed. had registered their names with his

office. He however sent names of S.T. candidates with qualifications of S.S.C., D.Ed.

4. The Management published advertisement on 9 April 1988 for filling up total 16 posts (2 SC, 12 ST and 2NT) with various qualifications. The advertisement specified that in the event of non-availability of requisite number of candidates in the reserved categories, candidates belonging to other categories will be considered for appointment. In response to the advertisement, Respondent No.1 submitted application on 21 April 1988 applying for the post of Teacher, specifying that he belongs to Munnerwarlu Scheduled Tribe. Upon being called for interview, Respondent No.1 filled up the application in prescribed format, in which again he stated that he belongs to Munnerwarlu ST community. After being selected, Respondent No.1 was issued the appointment order dated 15 June 1988 appointing him on the post of Assistant Teacher in Petitioner No.3-Ashram School. Clause-7 of the appointment order directed that the appointment would be subject to approval by Social Welfare Officer. On 1 July 1988, Petitioner-Management submitted proposal to Respondent No.3-Social Welfare Officer, Class I for grant of approval to the appointment of various appointees including Respondent No.1. In the information sent alongwith the proposal, in the Caste column, the word 'ST' was mentioned against the name of Respondent No.1. The proposal indicates that two more teachers, Shri. R.D.

Dixit and Shri. S.B. Rahinj were also appointed along with Respondent No.1 against Open and OBC categories respectively. This shows that the Management was apparently not able to receive applications from requisite number of eligible S.T. candidates and decided to make appointments through other categories.

5. Respondent No.3 issued order dated 20 December 1988 granting approval for the Academic year 1988-89 to appointment of various teachers including that of Respondent No.1. It appears that on 12 June 1989, fresh appointment order was issued in favour of Respondent No.1 w.e.f. 12 June 1989 and one more proposal dated 26 June 1989 was sent to the Social Welfare Officer for grant of approval once again specifying Respondent's caste as Scheduled Tribe in the proposal. Respondent No.3 granted approval by order dated 16 December 1989. It appears that, Petitioners recorded an entry in the service book of Respondent No.1 that he belongs to Munnerwarlu Scheduled Tribe category and the service book was countersigned by Respondent No.1. In the similar manner, approval was sought and granted for Academic Year 1990-91 also.

6. Petitioners claim that by letter dated 18 June 1993, Petitioner No.1-Trust called upon the Headmaster of Petitioner No.3-School to instruct Respondent No.1 to submit School Leaving Certificate, Caste Certificate etc. and accordingly, letter

dated 23 June 1993 was sent by the Headmaster of Petitioner No.3-School to Respondent No.1. But Respondent No.1 did not comply with the requisition. By letter dated 28 September 2004, the Social Welfare Officer directed Petitioner No.3-School to get the Caste Certificates of Reserved Category candidates verified. A letter was circulated amongst the concerned teachers in the School. On 13 December 2008 Petitioner-Management addressed letter to Respondent No.1 calling upon him to submit Caste Validity Certificate. Respondent No.1 however did not produce the Caste Validity Certificate. It appears that the information was sought about the school entries of Respondent No.1 under the Right to Information Act and the Headmaster of Zilla Parishad Primary School, Alkuti, Taluka-Parner, District-Ahmednagar, furnished information vide letter dated 7 March 2009 stating that as per the School records, Respondent No.1 belongs to Hindu Maratha category. Similarly, information was also sought from Ahmednagar College, which also confirmed that the entry of caste in respect of Respondent No.1 was 'Hindu Maratha'. It was however submitted that as per the order dated 8 July 1982, his caste was changed to Munnerwarlu Scheduled Tribe in the college records.

7. On account of failure of Respondent No.1 to submit Caste Validity Certificate, Petitioners did not permit him to sign muster from 10 January 2009 and informed Respondent No.3

about failure of Respondent No.1 to submit Caste Validity Certificate. Respondent No.1 filed Appeal No.13/2009 before the School Tribunal, Pune challenging his 'otherwise termination' w.e.f. 10 January 2009. In the meantime, Respondent No.1 made correspondence with Annasaheb Awate College for correction of entry of his caste to 'Maratha'. The College gave information under the Right to Information Act on 14 July 2009 that Respondent No.1 availed scholarship on the strength of his caste claim for three years.

8. Petitioner-Management issued chargesheet dated 28 July 2009 to Respondent No.1 proposing to hold departmental enquiry for misconduct of securing employment on the basis of false Caste Certificate. The School Tribunal allowed the Appeal No.13/2009 on 7 August 2009 on the ground that termination of services of Respondent No.1 without holding an enquiry and directed his reinstatement with backwages. Petitioners challenged Tribunal's order dated 7 August 2009 before this Court by filing Writ Petition No. 7514/2009. In the meantime, however, the departmental enquiry in pursuance of the chargesheet dated 28 July 2009 was conducted, in which Respondent No.1 was held guilty of the charge. By order dated 15 November 2009, Respondent No.1 was dismissed from service.

9. Respondent No.1 filed Appeal No.47/2009 before the Tribunal challenging the dismissal order. In the meantime, Writ Petition No.7514/2009 was disposed of by this Court in the light of subsequent events. The Tribunal allowed Appeal No.47/2009 observing that there were certain infirmities in the enquiry and directed reinstatement of Respondent No.1 with backwages while granting liberty to the Management to conduct further enquiry. Petitioner-Management challenged Tribunal's order dated 23 April 2010 in this Court by filing Writ Petition No. 4433/2010. The Writ Petition was allowed on 6 August 2010 by this Court by directing notional reinstatement of Respondent No.1 and to place him under suspension pending fresh enquiry. Accordingly, Respondent No.1 was notionally reinstated and placed under suspension.

10. On 27 September 2010, Petitioner-Management issued fresh chargesheet to Respondent No.1 on the charge of securing appointment against the post reserved for a reserved category. Respondent No.1 participated in the enquiry. The Enquiry Committee, comprising of three members, held Respondent No.1 guilty of the charge and recommended penalty of dismissal from service. Accordingly, Petitioner No.1-Management issued order dated 10 January 2011 imposing the penalty of dismissal from service on Respondent No.1. He filed Appeal No.08/2011 in the Tribunal challenging the dismissal

order. The Appeal was resisted by Petitioners by filing Written Statement. By judgment and order dated 5 November 2011, the Tribunal allowed the Appeal, setting aside the dismissal order holding that constitution of the Enquiry Committee was not as per the Rules as one of the Members of the Enquiry Committee was a retired teacher. Petitioner No.1 was directed to reinstate Respondent No.1 in service with liberty to conduct fresh enquiry, with direction to pay arrears of salary to Respondent No.1 during the intervening period. Petitioners challenged Tribunal's order dated 5 November 2011 by filing Writ Petition No. 10686/2011 in this Court. The issue about a retired teacher acting as a member of the Enquiry Committee was referred to the Full Bench. The Full Bench of this Court ruled in the year 2016 that a retired teacher can function as a Member of the Enquiry Committee. Therefore, Writ Petition No. 10686/2011 came to be allowed by learned Single Judge of this Court on 16 December 2016 setting aside the Tribunal's order dated 5 November 2011 and remitted the Appeal back to the Tribunal for fresh consideration on merits.

11. Accordingly Appeal No.08/2011 was restored on the file of the Tribunal. During the course of hearing of the said Appeal, Respondent No.1 contended that the Award Winning Teacher, Shri. Suresh Gosavi was not on the panel of Award Winning Teachers. Petitioners filed an Affidavit countering that contention. The Tribunal passed impugned judgment and order

dated 17 February 2018 allowing the Appeal on twin grounds of Award Winning Teacher, Shri. Suresh Gosavi not being on the panel and failure on the part of the Petitioner-Management to prove that Respondent No.1 was appointed against Scheduled Tribe category. The dismissal of Respondent No.1 was set aside with a direction to the Management to reinstate him as Assistant Teacher with full backwages. Petitioners have challenged the judgment and order of the Tribunal dated 17 February 2018 in the present petition. On 25 April 2018, when this petition came up for admission, the Counsel for Respondent No.1 made a statement that he would not seek enforcement of the impugned order till the next date. On account of that statement, it appears that the order of the Tribunal has not been complied till date.

12. The date of birth of Respondent No.1 is 1 March 1962 and it appears that he has attained the age of superannuation on 28 February 2020. Therefore, now there is no question of his retirement. Thus, now implementation of Tribunal's order would involve payment of backwages by the Management till 28 February 2020 and pensionary benefits consequent to his retirement.

13. Mr. Bandiwadekar, the learned Senior Advocate would appear on behalf of the Petitioners and would submit that the order of the Tribunal setting aside the order of dismissal is totally

perverse. He would submit that the Tribunal has erroneously held that the third member of the Enquiry Committee was a retired State Award Winner but was not empaneled. He would submit that the said ground was not taken in the Appeal, but the Tribunal still permitted Respondent No.1 to raise this submission. Secondly, Mr. Bandiwadekar would submit that a specific Affidavit was filed by the Petitioners before the School Tribunal alongwith letter issued by Education Officer dated 9 November 2017 alongwith the list of empaneled Award Winning Teachers, which included name of the Enquiry Committee Member, Shri. Suresh Gosavi. He would therefore submit that the Tribunal has not taken this aspect into consideration while erroneously holding that constitution of Enquiry Committee was illegal.

14. Mr. Bandiwadekar, would then submit that the Tribunal's finding that there was absence of evidence about appointment of Respondent No.1 from vacancy reserved for Scheduled Tribe category is again perverse. That the Tribunal has erroneously held that the appointment of Respondent No.1 was from Open Category. He would invite my attention to several documents starting from sending requisition, issuance of advertisement, appointment of Respondent No.1 and sanctioning of proposals for his appointment, entries in his service book and seniority list to prove that the appointment of Respondent No.1 was undoubtedly against the vacancy reserved for Scheduled Tribe

category. He would submit that as and when Respondent No.1 was called upon to submit Caste Validity Certificate, he never claimed that his appointment was against Open Category. That the documents obtained from the college records clearly indicate that Respondent No.1 had availed scholarships on the basis of his claim of belonging in the Scheduled Tribe category. That in such circumstances, there was ample evidence available on record to demonstrate that appointment of Respondent No.1 was always against ST Category vacancy. Alternatively, Mr. Bandiwadekar would submit that the Tribunal's order for payment of full back wages is erroneous and in the event this Court comes to a conclusion that dismissal order deserves to be set aside and any backwages are payable to Respondent No.1, such payment of backwages must be paid by the State Government and the Management cannot be asked to bear the burden towards backwages. He would submit that during pendency of proceedings before the School Tribunal, Petitioner-Management had kept the post occupied by Respondent No.1 vacant and therefore no additional burden would be put on the State Government if it is directed to pay backwages to Respondent No.1. In support of his contentions, Mr. Bandiwadekar would rely upon the Government Resolution dated 14 March 1978 issued by the Government of Maharashtra, as well as orders of this Court in ***Nandgaon Panchkroshi Madhyamik Shikshan Sanstha, Nandgaon and anr. V/ s. Kum. Kavita Prakash Nalawade and anr.*** (Writ Petition No.3643

of 2009) decided on 20 July 2009 and in *The President/Secretary Rashtra Bhasah Mahavidyalaya V/s. Shri. Phoolchand M. Ram & Ors.* Writ Petition No. 8574/2004) decided on 16 December 2005.

15. Mr. Patil would oppose the petition supporting the order passed by the School Tribunal. He would submit that Respondent No.1 was appointed as an Open Category candidate and was wrongly terminated for failure to produce the Caste Validity Certificate. He would submit that the advertisement was issued for filling up the post in High Schools which are not under the control of the Social Welfare Department. That at the time of appearing for the interview, Respondent No.1 disclosed inability to produce the Caste Certificate and was therefore considered as Open Category candidate. On account of possession of higher qualification of B.Sc B.Ed, the Chairman of the Management expressed willingness to consider Petitioner's case for vacant category post in Secondary Ashram School and on the date of interview, he separately applied in the prescribed format for the post of Assistant Teacher on 24 May 1988. This is how Respondent No.1 was appointed as Assistant Teacher in Secondary Ashram School without producing S.T. Certificate and without specifying in the appointment order that the same was against S.T. category post. That alongwith Respondent Nos. 1 and 2, two other teachers were appointed in Secondary Ashram School and

since there were only five posts in that School, there was no question of any post being reserved for S.T. category. That even if combined strength of Primary and Secondary Ashram Schools was to be considered of total $8 + 5 = 13$ posts and at the highest one post could be reserved for S.T. Category, Mr. B.T.Bhangre Assistant Teacher belonging to S.T. category was already appointed in the year 1987 and therefore there was no posts left in either of the sections of the Ashram Schools for being earmarked for S.T. category as reserved. That none of the approval orders issued by the Social Welfare Officer were in respect of the reserved category. That approval to his appointment order was always granted in open category.

16. Mr. Patil would submit that the School Tribunal has correctly appreciated the factual and legal position and that the Tribunal has not committed any jurisdictional error for this Court to interfere in its order. That Respondent No.1 was not gainfully employed during the intervening period and the Tribunal has correctly directed payment of full backwages and consequential benefits. He would pray for dismissal of the petition.

17. Ms. Nimbalkar, learned AGP would appear on behalf of Respondent Nos. 2 and 3 and would strenuously oppose the contention of the Petitioner that the burden of backwages is required to be borne by the State Government. She would submit that the decision to terminate the services of Respondent No.1 was

taken by the Management and that therefore the Management alone must bear the responsibility of payment of backwages. She would submit that the Apex Court in its judgment in ***Educational Society, Tumsar and Ors. V/s. State of Maharashtra & Ors.*** (2016) 3 SCC 512 has held that the Resolution dated 14 March 1978 is no longer valid after coming into effect of the Act of 1977. That the Division Bench of this Court in ***Rajapur Shikshan Prasarak Mandal, Ratnagiri Vs. State of Maharashtra*** Writ Petition No. 757 of 2016 decided on 18 April 2018, has also considered the effect of Resolution dated 14 March 1978 and has held that once the Management takes a decision to terminate the services, the burden of backwages must be borne by the Management alone. She would further submit that the facts and circumstances leading to the termination of Respondent No.1 are such that the State Government cannot be directed to bear the burden of backwages. She would pray for dismissal of the petition.

18. Rival contentions of the parties now fall for my consideration.

19. From the factual narration in the preceding paragraphs, it is clear that there have been numerous rounds of litigations between the Petitioner-Management and Respondent No.1 with regard to his service status. Respondent No.1 has been imposed the penalty of dismissal from service on 10 January 2011

on account of proof of charge of securing appointment on the basis of false caste claim. It is Management's case that, Respondent No.1 was selected and appointed against post reserved for S.T. category and that it was incumbent upon him to produce the Caste Validity Certificate in respect of his caste claim. The Tribunal has proceeded to allow the Appeal of Respondent No.1 on twin grounds of erroneous constitution of Enquiry Committee and failure to establish that Respondent No.1 was appointed against reserved category post.

20. The Tribunal has held that the constitution of the Enquiry Committee was invalid as the third member chosen by the Management was not on the panel of State Award Winning Teacher. Reliance in this regard is placed by the Tribunal on the judgment of this Court in *Shikshan Prasarak Mandal, Awasari V/s. Ramesh Bhimrao Narayankar and Ors.* 2016 (2) Mh.L.J. 677. It must be observed here that the objection about the Award Winning Teacher, Mr. Suresh Gosavi not being on the panel was belatedly raised by Respondent No.1 only after the Appeal was remanded by this Court by its order dated 16 December 2016. The said ground was apparently not raised by Respondent No.1 in his Appeal No.08/2011. The said objection was also not raised by Respondent No.1 during the conduct of enquiry. Respondent No.1 thus participated in the enquiry which comprised the Award Winning Teacher, Shri. Suresh Gosavi without raising any demur.

It therefore becomes debatable as to whether it was open for Respondent No.1 to raise this issue directly in his Appeal before the Tribunal. More interestingly, this ground was not even raised in the Appeal and only after the proceedings were remanded by this Court by its order dated 16 December 2016, that Respondent No.1 thought of raising this ground.

21. Since the ground of Award Winning Teacher not being on the panel was raised belatedly after remand of the Appeal, the Petitioner-Management was required to file an Affidavit producing the necessary documents to prove that Shri. Suresh Gosavi was indeed on the panel. Alongwith its Affidavit dated 18 November 2017, Petitioner-Management produced letter dated 9 November 2017 of Education Officer (Secondary) Pune Zilla Parishad certifying that Shri. Suresh Gosavi was given National Award in the year 1995 and has been on the panel since then. The Education Officer, Secondary Pune Zilla Parishad also forwarded list of panel of Award Winning Teachers by his letter dated 1 April 2017. The said list shows that the name of Shri. Suresh Gosavi has been included in the panel of State/National Award Winning Teachers. Without considering these documents, the Tribunal has erroneously held that the enquiry is vitiated as certified copy of inclusion of State Award Winning Teachers/ third member of the Enquiry Committee was not produced. This finding recorded by the Tribunal is totally perverse, as Petitioners produced the list of

panel of Award Winning Teachers by way of its Affidavit dated 18 November 2017. Therefore, I hold that the name of the third member of the Committee, Shri. Suresh Gosavi figured on the panel of State/National Award Winning Teachers and the enquiry cannot be said to be vitiated.

22. Having held that the enquiry has been conducted after following the due procedure prescribed in the Rules, the next question is whether there is any perversity in the findings recorded in the enquiry proceedings. Respondent No.1 faced the charge of securing employment on the basis of false tribe claim. There is hot debate between the parties as to whether his initial appointment is against the post reserved for S.T. category. There is no doubt to the position that the Respondent No.1 has repeatedly declared himself as belonging to Munnerwarlu-Scheduled Tribe category. The advertisement also indicates that the same was issued for filling up 2 posts of S.C., 12 posts of S.T. and 2 posts of N.T. The advertisement however did not specify as to whether the same was issued for filling up posts in Secondary Schools or Ashram Schools. It is the case of the Petitioner-Management that the advertisement was for filling up the post in the Ashram School. However, Respondent No.1 has contended that the total cadre strength of teachers in Primary and Secondary Section of the Ashram Schools was only $8 + 5 = 13$. The Petitioners have not disclosed the total cadre strength of its Ashram Schools. In that view of the matter, it

is difficult to believe that all 12 posts of S.T. category were proposed to be filled up only in the Ashram School of Petitioner No.1-Trust. The Trust runs 15 Secondary Schools and only one Ashram School. Considering 7 ½% reservation for S.T. category, the Ashram School must have total cadre strength of 170 teachers for reserving 12 posts amongst them for S.T. category. Petitioners have not disclosed the exact sanctioned strength in both Primary and Secondary Schools. It is therefore difficult to hold that the advertisement for filling up all of 12 posts in S.T. category was only for Ashram School.

23. Respondent No.1 has come up with a specific case that his appointment is done in the Ashram School where there was no S.T. category vacancy in the year 1988. He has submitted that for total cadre strength of 13, only 1 post of S.T. category could be reserved in that Ashram School and Mr. B.T. Bhangre was already occupying the said post of Assistant Teacher in S.T. category.

24. Respondent No.1 has also come up with a case that though he stated in the application form that he belongs to S.T. category of Munnerwarlu, he did not have the Tribe Certificate and that therefore he was appointed in Open Category. Petitioners have not placed on record any Tribe Certificate allegedly produced by Respondent No.1 at the time of his appointment. This is yet another factor which would create a doubt as to whether

Respondent No.1 was indeed appointed against the post reserved for S.T. category. The advertisement contained a specific stipulation that the post would be filled up through other categories in the event of non-availability of S.T. category candidates. As observed above, two more teachers, Shri. R.D. Dixit and Shri. S.B. Rahinj were also appointed along with Respondent No.1 against Open and OBC categories respectively. This would show that Petitioners did not receive applications from eligible ST candidates to fill up all 12 posts and therefore decided to fill some of the posts through other categories. It may therefore be possible that on account of inability of Respondent No.1 to produce the Tribe Certificate in support of his tribe claim, the Management may have granted him appointment against Open Category.

25. True it is that, in service book of Respondent No.1 as well as in various seniority lists, he has always been shown as belonging to S.T. category. However, for the purpose of dismissing him from service, the burden of proving that the appointment of Respondent No.1 was made in S.T. category on the Management was heavy. The charge has led to extreme penalty of dismissal. In such circumstances, one cannot assume appointment of Respondent No.1 in S.T. category merely on the basis of surmises. The surmises and conjectures are raised on the basis of statements made by Respondent No.1 in his application form that he belongs to Munnerwarlu S.T. category. The entries made in his service

book and inclusion of his name as S.T. category candidate in Seniority List are yet other factors used for raising such surmises. However, it is well settled law that in a domestic enquiry, suspicion cannot take place of proof. What is proved at the highest by the Management in the domestic enquiry is a mere suspicion that Respondent No.1 may have been appointed against the post reserved for S.T. category. However, this assertion has not been proved by production of copy of Tribe Certificate which Respondent No.1 allegedly produced in support of his tribe claim. There is no explanation as to how Respondent No. 1 could be appointed against ST category post without production of any caste certificate. There are three factors which would weigh heavily in favour of Respondent No.1 viz (i)that he did not produce any Tribe Certificate of Munnerwarlu Tribe (ii) presence of specific stipulation in the advertisement for filling up posts through other candidates in the event of non-availability of requisite number of S.T. candidates coupled appointment of Shri. R.D. Dixit and Shri. S.B. Rahinj against Open and OBC categories respectively and (iii) stand taken by Respondent No.1 that he was considered as Open Category candidate due to his inability to produce Tribe Certificate. These three factors would dispel the doubts cast by Petitioner-Management on the basis of contents of application form, entries in service book and Seniority List.

26. Respondent No.1 has rendered service for long duration since 15 June 1988. The penalty of dismissal from service would entail loss of pension and pensionary benefits as well. To award such harsh penalty, one must be certain that the appointment was made against vacancy reserved for S.T. category. Though the School Tribunal or this Court is not expected to undertake the exercise of appreciation of evidence and/or determine its adequacy, it would also not mean that Respondent No.1 must face the punishment of dismissal from service merely on the basis of a suspicion. This is not a case where he is sought to be punished for any positive act of misconduct. He has been dismissed from service on account of his failure to produce Caste Validity Certificate to prove his tribe claim. No doubt the Constitution Bench in ***Food Corporation of India V/S. Jagdish Balaram Behara*** (2017) 8 SCC 670 has held that employees whose caste claims are invalidated are required to be denuded of all the benefits which they have derived out of bogus caste claim. In the present case, there is a serious dispute as to whether the Respondent No.1 has indeed taken benefit meant to be availed only by S.T. candidates. It is not the case of the Petitioner-Management that there were other S.T. candidates available in the merit list for being appointed and that the Respondent No.1 deprived them of such appointment on account of his false tribe claim. The Respondent No.1, on the other hand has come up with a case that other candidates not belonging to S.T. category were

also appointed with him. This would show that the Petitioner-Management was not in a position to secure adequate number of candidature for filling up 12 advertised S.T. category post. In my view, therefore the Tribunal cannot be faulted for arriving at a finding that the Petitioner-Management failed in proving that the Respondent No.1 was appointed as S.T. category candidate.

27. Having held that there is no error in the Tribunal's decision in setting aside the dismissal order dated 10 January 2011 and directing reinstatement of Respondent No.1, the next issue is about entitlement of Respondent No.1 for backwages. The Tribunal has awarded full backwages to Respondent No.1 w.e.f. 10 January 2011. As observed earlier, Respondent No.1 has attained the age of superannuation on 28 February 2020. The issue is therefore about backwages for the period 10 January 2011 to 28 February 2020. Though the Petitioner-Management has not been able to prove with some degree of certainty that the appointment of Respondent No.1 was made against S.T. category, the conduct of the Respondent No.1 is also not free from blemish. It appears that Respondent No.1 attempted projecting himself as belonging to Munnerwarlu S.T. category at some places and Hindu Maratha at few other instances. It has come on record that in the School records, Respondent No.1's caste is recorded as Hindu Maratha. So far as college record is concerned, it appears that Respondent No.1 made correspondence with the College Authorities on 19

March 2009 requesting for deletion of the entry Munnerwarlu S.T. with that of Hindu Maratha. One of the objectives behind doing so was to raise defence in the enquiry that he belongs to Hindu Maratha category. However, the College has provided information vide letter dated 14 July 2009 that Respondent No.1 availed benefit of scholarships by accepting amount of Rs. 1618/-on three occasions during the period 1983 to 1986 by representing that he belongs to Munnerwarlu Scheduled Tribe Category.

28. Therefore, though the Management has been unsuccessful in proving that the appointment of Respondent No.1 was against S.T. category, award of full backwages to Respondent No.1 as a result of setting aside the order of dismissal would not be warranted in the peculiar facts of the present case. Respondent No.1 ought to have taken a specific stand in the year 1993 that he was not appointed against S.T. category when the Petitioners called him upon to prove his tribe claim. Similar requisition was also made by the Petitioners on 31 December 2009 when again Respondent No.1 did not claim that he was never appointed against S.T. category. On the contrary, he countersigned the service book containing entry of his caste as Munnerwarlu Scheduled Tribe. He also did not raise any objection for being shown as belonging to S.T. category in various seniority lists. In such circumstances, Respondent No.1 cannot be rewarded with full backwages upon the order of dismissal from service being

found invalid. In my view, considering the facts and circumstances of the case, the ends of justice would meet if the Respondent No.1 is held entitled for 50% backwages during the intervening period.

29. The next issue is-who shall bear the burden of 50% backwages to Respondent No.1? Mr. Bandiwadkar has urged that as per the Government Resolution dated 14 March 1978, the Government should pay the amount of backwages. He has placed reliance on the order of this Court in *Nandgaon Panchkroshi Madhyamik Shikshan Sanstha* (supra), wherein the learned Single Judge of this Court by relying on Resolution dated 14 March 1978 has directed the Government to make payment of backwages. However, Ms. Nimbalkar has placed reliance on the judgment of the Apex Court in *Educational Society, Tumsar* (supra), in which the Apex Court has considered the effect of Resolution dated 14 March 1978 and has held in paras-9, 10, 11 and 12 as under :

9. The learned counsel for the appellants contended that the Government of Maharashtra had passed Government Resolution dated 14-3-1978 which prescribes that in case an employee of an aided school is terminated by the Management, but his termination is subsequently set aside in appeal by the competent authority, the Government would pay the back wages to the said employee subject to the satisfaction of two conditions, namely, that no other person has been appointed on the post during the intervening period and payment of back wages would not result in additional financial burden to the Government. On that basis, it is argued that the financial burden is to be borne by the Government. He submitted that, no doubt, the Tribunal specifically passed the order directing the appellant to pay the salary. If general rule is applicable, this direction may not be of much consequence inasmuch it is the

appellant who is supposed to pay the back wages to Respondent 4 as the employer-employee relationship is between the appellant and Respondent 4. The learned counsel argued that the issue is as to whether the appellant is entitled to recover this amount from the Government on the ground that the Government is providing 100% aid. The Government of Maharashtra had itself passed Resolution dated 14 - 3 - 1978 in this behalf particularly taking care of such situations. A reading of this Resolution would show that the precise question which drew the attention of the Government was as to whether an employee whose services were terminated and who is reinstated by the Management in pursuance of the final decision of the competent appellate authority of the Department could be paid their arrears of salary and allowances by the Department itself. After considering this problem, the Government decided to pay the same which can be discerned from the reading of Para 2 of the aforesaid Resolution dated 14-3-1978. To quote:

"2. The Government is pleased to direct as follows:

(A) Where the management of a non-government secondary school has reinstated the employee in pursuance of the order of the competent appellate authority of the Department (issue on a representation/appeal made by the aggrieved employee or the management, as the case may be), if his past arrears of salary and allowances, or any portion thereof, relating to the period from the date of termination of his service (which was held to be wrongful by the competent appellate authority of the Department) till the date of his reinstatement have remained to be paid to him, these should be directly paid by the Education Officer/Educational Inspector under the scheme of payment of salary and all allowances through cooperative banks, in all such cases, no cut should be applied to the non-salary grant due to the school if all the following conditions are fulfilled:

(i) Salary and allowances of the substitute, if any, appointed by the Management in place of the employee whose services were terminated, have not been paid by the Department.

(ii) That the payment of due arrears of salary and allowances of the employee who has been reinstated would not involve any additional expenditure to the Government over and above the

expenditure which would in any case have been incurred on the salary, etc. of the total teaching and non-teaching staff admissible to the school on the basis of the total teaching workload and other norms prescribed in that behalf by the Government."

It is further submitted that since the school run by the appellant Society is 100% aided institution, therefore, burden of back wages of Respondent 4, which is nothing but the salary for the intervening period, should fall on the Government.

10. The learned counsel for the official respondents, on the other hand, submitted that Government Resolution dated 14-3-1978 is no longer valid as thereafter the legislature enacted the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (hereinafter referred to as "the Act") which became operational from 20-3-1978. He submitted that since the position is governed by the provisions of the aforesaid Act, which are statutory in nature, the aforesaid Government Resolution dated 14-3-1978 loses its force. He further submitted that in any case that Government Resolution is applicable and merely because the school is 100% aided institution would not make any difference on the facts of this case wherein specific direction was given by the Tribunal to the appellant Society to make the payment of back wages after recording a finding that the termination order was without jurisdiction.

11. We have considered the aforesaid submissions of the learned counsel for the parties and have gone through the statutory provisions. It cannot be denied that as per the normal principle, whenever a terminated employee of an aided school challenges the termination and termination is held to be illegal by a competent judicial forum/court and order is passed for payment of back wages, etc., the Government is supposed to bear the said burden. The reason for the same is that such back wages or any other payment are in the nature of salary for the Intervening period or other compensation in lieu thereof which is to be paid to the employee who would have earned these benefits had he remained in service. In that eventuality, obviously, the Government/Education Department would have paid those benefits in terms of financial

aid provided to such a school. However, if there is a specific provision contained in any statute which contains contrary position, then such provision would prevail upon the aforesaid general rule. Likewise, if there is any administrative order which is contrary to the aforesaid general rule, the said administrative order shall prevail as in that situation, it would be treated that the aid is given subject to the conditions contained in such administrative order.

12. Insofar as the present case is concerned, we are of the opinion that it is not necessary to go into the issue as to whether the Government Resolution dated 14-3-1978 is no more valid or whether provisions of the Act or Rules are contrary to the aforesaid Resolution and, therefore, would govern the field. For the reasons recorded hereinafter, we find that the manner in which action was taken by the appellants against Respondent 4 and the findings of the Tribunal thereupon, it is the appellants who are obligated to pay the back wages to Respondent 4. We find that in the peculiar facts of the present case, the School Tribunal consciously put the burden of paying back wages of Respondent 4 upon the appellant school authorities.

30. Thus as per the judgment of the Apex Court in *Educational Society, Tumsar* (supra), though the normal rule is that in absence of a provision to the contrary in statutory rules, the Government is supposed to bear the burden of backwages. However, the Apex Court then went into the facts of the case and held the Management in that case must bear the burden of backwages. It thus depends on the facts and circumstances of each case and there cannot be a straightjacket formula that in every case where termination is set aside, the backwages must be borne by the State Government.

31. Applying the dictum of the judgment of the Apex Court in *Educational Society, Tumsar* (supra), I now proceed to examine if the facts of the present case warrant issuance of direction to the State Government to bear the burden of paying of backwages.

32. In the present case, the Petitioner-Management dismissed Respondent No.1 from service on a premise that his initial appointment was in his capacity as S.T. candidate. However, they failed to prove this assertion by producing copy of the Tribe Certificate allegedly produced by the Respondent No.1 at the time of his initial appointment. The dismissal order is set aside on account of failure of the Petitioner-Management to prove the charge. The State Government had never directed the Petitioner-Management to take any action against Respondent No.1. It was a call taken by the Petitioner-Management to initially prevent Respondent No.1 from signing the muster and preventing him from attending the duties. Later they initiated two disciplinary proceedings and initiated penalty of dismissal from service twice. There have been numerous rounds of litigations between the parties, extending the intervening period, which cannot be attributed to any actions of the State Government. In these circumstances, it would not be appropriate to bleed the public exchequer on account of the failure on the part of the Petitioner-

Management to prove the charge, which they had decided to levy against Respondent No.1. In my view, therefore the burden of payment of backwages must be borne by the Petitioner-Management. This view would be fortified by the observations made by the Division Bench of this Court in ***Rajapur Shikshan Prasarak Mandal Ratnagiri***, (supra), in which it has held in paras- 10, 11, 12 and 13 as under :

10 The recourse to the said Government Resolution of 14th March 1978 is completely unjustified in the peculiar facts and circumstances of the case. Normally, whenever a reinstatement is ordered, in case of an aided school, the State Government may be asked to bear the burden of the backwages. However, when the management on its own decided to proceed against an employee, on the alleged grounds of L misconduct and failed to prove such an act, the State Government should not be unnecessarily burdened with the liability towards amount of back wages to be paid to such an employee. The Government Resolution on which heavy reliance is placed by the learned counsel for the petitioner cannot be read in isolation and when there is a specific provision contained in the statute which authorizes the School Tribunal to fix the responsibility of payment of back wages on the management in peculiar facts and circumstances of the case. The School Tribunal has exercised its discretion in burdening the management with the payment of back wages and no fault can be found with the order of the Tribunal.

11 The Hon'ble Apex Court in case of Education Society, Tumsar Vs. State of Maharashtra & ors', was confronted with somehow similar situation where the ppellant Society, 100% aided Society, terminated the services of its employees and Tribunal had set aside the termination and directed reinstatement of back wages, and when the Society would place reliance on the same Government Resolution dated 14/3/1978, the Hon'ble Apex Court observed thus:

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12 Reliance is also placed by the learned counsel for the petitioner on the Division Bench judgment of this Court dated 26th September 2016. The Division Bench has, in turn placed a reliance on a judgment of the learned Single Judge in Writ Petition No.8574/2014

dtd.16/9/2005. The learned Division Bench has also made a reference to the judgment of the Hon'ble Apex Court in case of Educational Society, Tumsar. & Ors Vs. State of Maharashtra (supra). However, the judgment is delivered in light of the peculiar facts involved and it allowed the writ petition and directed the Education officer to release the amount in terms of judgment dated 9th September 2014. The Division Bench was impressed by the fact that no additional burden is being put on the State Government.

13 As far as the present case is concerned, the case is covered by the judgment of the Hon'ble Apex Court in Educational Society, Tumsar & Ors Vs. State of Maharashtra (supra), and Their Lordships have specifically made a reference to the said G.R dated 14/3/1978 and after taking into consideration the manner in which the petitioner has levelled charges against the employee, and in light of the findings recorded by the School Tribunal, it concluded that it is the exclusive responsibility of the Management to pay the back wages to the respondent no.3. The School Tribunal had also consciously put the burden on the management to pay the back wages and the Hon'ble Apex Court did not find the reliance of the Government Resolution dated 14.3.1978 to be justified.

By applying the law laid down by the Hon'ble Apex Court in Educational Society, Tumsar & Ors Vs. State of Maharashtra (supra), we are of the clear opinion that the petitioner is not entitled for reimbursement of the amount of back wages, which it is duty bound to pay to the respondent no.3 in terms of the order of the School Tribunal and the orders passed by the Education Officer, cannot be faulted with.

33. I therefore hold that the burden of paying 50% backwages to Respondent No.1 must be borne by the Petitioner-Management.

34. Since dismissal of Respondent No. 1 is set aside, he would be entitled to pension and other pensionary benefits as if he continued in service till 28 February 2020 when he attained the age of superannuation.

35. I accordingly proceed to pass the following order :

- (I) The Judgment and Order dated 17 February 2022 passed by the School Tribunal in Appeal No.08/2011 is upheld to the extent of setting aside the dismissal order dated 10 January 2011. Respondent No. 1 shall be deemed to have continued in service upto 28 February 2020. His pay be revised accordingly by grant of yearly increments.
- (II) The Tribunal's order for payment of backwages is modified to the extent that Respondent No.1 shall be entitled to payment of 50% backwages during the period from 10 January 2011 to 28 February 2020.
- (III) The backwages shall be paid by Petitioner-Management within a period of eight weeks from today.
- (IV) The Petitioner-Management shall submit the proposal for payment of pensionary benefits to Respondent No.1 based on revised pay fixation within a period of four weeks from today. Upon receipt of such proposal, the concerned Department shall proceed to sanction pension and other pensionary benefits to Respondent No.1 by taking decision on the proposal within eight weeks from the date of receipt of proposal. The amount towards pensionary benefits and arrears of pension w.e.f. 1 March 2020 shall be paid to Respondent No.1 immediately after

sanction of the proposal and in any case, within eight weeks of the date of such sanction.

34. With the above directions, the Writ Petition is disposed of.

SANDEEP V. MARNE, J.