

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO.2106 OF 2021**

Peoples Education Society and Anr. **...Petitioners**

Versus.

Manisha Ramkrushna Rajput and Ors. **...Respondents**

**WITH**

**WRIT PETITION NO.2192 OF 2021**

Peoples Education Society and Anr. **...Petitioners**

Versus.

Balusha Santosh Bhasal and Ors. **...Respondents**

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**Mr. Mandar Limaye** *for the Petitioners.*

**Mr. Swaraj Jadhav** *for Respondent No.1.*

**Ms. Sulbha Chipade**, *AGP for Respondent Nos.2 to 4-State in WP/2106/2021.*

**Mr. P.V. Nelson Rajan**, *AGP for Respondent Nos.2 to 4-State in WP/2192/2021.*

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**CORAM : SANDEEP V. MARNE, J.**

**Reserved On: 26 March 2026.**

**Pronounced On: 7 April 2026.**

**Judgment :**

1) These Petitions are filed by the Management challenging the judgments and orders dated 19 April 2021 passed by the Presiding Officer, School Tribunal, Mumbai in Appeal Nos. 15 of 2019 and 16 of 2019. By the impugned judgments and orders, the Tribunal has allowed the Appeals and has set aside termination of the first Respondent-Teachers with further directions to the Petitioners to reinstate them with full backwages and continuity of service.

2) Briefly stated, facts of the case are that Peoples' Education Society (Petitioner No.1) is a society registered under the Maharashtra Public Trusts Act, 1950 and the Societies Registration Act, 1860, which runs *inter-alia* Maharashtra High School No.2 and Junior College of Commerce, which is recognised and aided by the State Government. At the relevant time, six subjects were being taught in the college viz., English, Marathi, Book Keeping & Accountancy, Organisation of Commerce and Secretarial Practice. The Petitioners had engaged Assistant Teachers for each of the subjects. One of the Assistant Teachers M. M. Gade, teaching Secretarial Practice superannuated on 1 July 2014. Before his superannuation, Petitioner submitted application dated 6 June 2014 in compliance with Section 5(1) of the Maharashtra Employees of Private Schools Act, 1981 (**MEPS Act**) for making available surplus teacher and for grant of NOC to fill up the post from a suitable candidate.

The Petitioner submitted reminders dated 31 July 2014, 13 January 2015. In response, a reply was received from Deputy Director, Education, Mumbai, on 16 January 2015 requiring compliance of certain documents. According to the Petitioners, the requisite documents were supplied but neither surplus teacher was made available nor NOC was granted. In the meantime, another Assistant Teacher- Mr. M.S. Javale teaching English subject and Mr. S.B. Gaddamwar teaching Economic subject were to retire on 31 May 2015 and 30 June 2015 respectively. Petitioner once again requested on 1 April 2015 and 19 May 2015 for deputation of surplus teachers and for grant of NOC. However, no reply was received from the office of Deputy Director, Education, Mumbai. It is the case of the Petitioners that since three teachers had retired and the college was in the need of teachers, the management decided to make appointment on temporary basis till availability of surplus teachers or till grant of NOC. Accordingly, an advertisement was published in newspapers on 3 July 2015 inviting applications *inter-alia* for filling up the posts of lecturer in Economic, Secretarial Practice and English subjects. According to the Petitioners, the advertisement was issued only for filling up posts on temporary basis. That therefore reservation breakup was not declared.

3) It appears that the Respondent No.1 in both the Petitions applied in pursuance of the advertisement. They were selected and appointed for the academic year 2015-16. Manisha Ramkrushna Rajput was appointed to teach Economic and Balusha Santosh Bhasal for teaching English subject. According to the Petitioners, even after

appointments of said teachers, correspondence was made for deputation of surplus teachers or for grant of NOC.

4) It is the case of the Petitioners that both the Teachers were appointed on temporary basis for various academic years and were continued in service for four academic years of 2015-16, 2016-17, 2017-18 and 2018-19. The Teachers filed Writ Petition No.3603 of 2019 complaining about non-sending of proposal for their approval. It is the case of the Petitioners that upon expiry of academic year 2018-19, the services of both the Teachers came to an end by efflux of time. The Teachers perceived the action of the management as termination of their services and filed Appeal No.15 of 2019 (Manisha Rajput) and Appeal No.16 of 2019 (Balusha S. Bhasal) challenging their discontinuation from service. The Appeals were resisted by the Petitioner-Management by filing written statements. The Teachers filed rejoinder to which Sur-rejoinder was filed by the Management. The learned Presiding Officer of the School Tribunal proceeded to allow both the Appeals by judgment and order dated 19 April 2021 setting aside 'otherwise termination' of both the teachers and directing their reinstatement with full back wages and continuity of services. Aggrieved by the orders passed by the School Tribunal, the Petitioner-Management has filed the present Petitions.

5) Mr. Mandar Limaye, the learned counsel appearing for the Petitioner-Management submits that the Tribunal has erred in allowing the Appeals and directing reinstatement of the Respondent-Teachers in ignorance of the position that they were engaged merely on temporary basis awaiting allotment of surplus teachers or issuance of NOC for filling

up posts on regular basis. He submits that the Management never intended to appoint the Respondents as permanent teachers. That no appointment orders were issued to them and they were utilised merely on temporary basis for four academic years. He relies on several resolutions adopted by the Petitioner-Management for making temporary engagements of the Respondents. That the Tribunal has failed to appreciate the true purport of the said resolutions and has erroneously arrived at a conclusion that the Respondents were appointed on permanent basis. That the findings recorded by the School Tribunal that the temporary appointment cannot be made against permanent vacancy is in the teeth of Full Bench judgment of this Court in **Ramkrishna Chauhan Versus. Seth D.M. High School and others**<sup>1</sup>. He submits that it is permissible to make temporary appointments against permanent vacancies.

6) Mr. Limaye further submits that the Tribunal has erred in drawing adverse inference against the Petitioner for non-production of appointment orders of the Respondents. That no appointment orders were ever issued to the Respondents and that therefore there was no occasion for producing the same. That the Tribunal erroneously ignored resolutions adopted by the management by citing absence of pleadings. He submits that temporary arrangements were required to be made by engagement of the Respondents since office of Deputy Director Education, Mumbai was not responding to repeated requests made by the Petitioner-Management. He submits that the Management did not fill up positions vacated by Respondents after their discontinuation by other

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outside teachers. That one post for teaching Economic subject has been filled up by appointment of surplus teacher sent by the State Government. That the other post for English subject has not been filled up at all. He further submits that there was reduction in the sanctioned strength of the college from 6 posts to 3 posts. That all the three posts are occupied and there is no vacancy left for occupation of the Respondents. He submits that the Management had in fact adopted a resolution on 19 May 2021 to apply to the authorities to close down the junior college from the academic year 2022-2023. He therefore submits that the Management is unable to reinstate the Respondents. He prays for setting aside of the impugned orders.

7) Mr. Jadhav, the learned counsel appearing for the Respondent No.1-Teachers opposes the Petitions. He submits that the School Tribunal has rightly held the appointments of the Respondents as regular appointments. That there is no dispute about the position that their appointments are made against permanent posts vacated on account of superannuation of regular teachers. That it is impermissible in law to make temporary appointments against the permanent vacancy. That even if temporary appointment is made against the permanent vacancy, the same cannot be for indefinite time. He submits that appointments have been made after following of due process of selection meant for regular appointments. That the advertisements did not specify that the appointments were temporary nor the Respondents were ever informed that the appointments were made on temporary basis.

8) He further submits that the appointment orders were actually issued to the Respondents, but the same were taken back under guise of effecting corrections. That if appointments were temporary in nature, management ought to have produced such appointment orders. That the Management deliberately withheld the appointment orders and the Tribunal has rightly drawn adverse inference against the Petitioners. Mr. Jadhav further submits that the Petitioner's reliance on so-called resolutions is misplaced since no pleadings were incorporated in the written statement relating to such resolutions. That the so-called resolutions were introduced only during the course of hearing of the Appeals and reliance thereon is clearly afterthought. That in any case, the so-called resolution cannot decide the nature of appointments made by the Management. That the appointments were made on permanent basis under a hope of receipt of NOC from the office of Deputy Director, Education. However, Management illegally terminated the Petitioners after getting wind of the fact that the Respondents would demand confirmation in service as Assistant Teachers on completion of three years' service as *Shikshan Sevak*. That approval in respect of appointment of the Respondent No.1 was deliberately not sought.

9) Mr. Jadhav further submits that School Management is otherwise justified in making appointments from the open market after non-receipt of any response from the State Government relating to surplus teachers. In support, he relies on judgments of this Court in **The Vidarbha Youth Welfare Society Versus. The Principal Vidarbha Youth Welfare Society Polytechnic, Badnera<sup>2</sup>, Rajan Sahadeo Ratul Versus.**

2 WP No. 4272 of 2016 decided on 15 November 2021

**State of Maharashtra and another<sup>3</sup> and Samidha Nimkar Versus. Somaiya Vidyavihar<sup>4</sup>.**

10) Mr. Jadhav further submits that even if temporary appointment can be made against permanent vacancy, the same does not restrict the jurisdiction of the School Tribunal from conducting an enquiry as to whether the appointment should be treated as made on probation. That in the present case, the Tribunal has correctly exercised such jurisdiction by conducting enquiry into the nature of appointment of the Respondents.

11) Mr. Jadhav further submits that the Teachers were paid salaries during the vacation month of May every years belying the defence of temporary appointment for each academic year. That if appointments were made temporarily for each year, they ought to have produced separate appointment and termination orders which the Management did not produce. That the teachers were deputed to perform election duties, which are never allotted to temporary teachers. They were also deputed to perform various other tasks which only regular teachers are supposed to perform. That therefore there is ample material to presume that the appointments were regular for all practical purposes. He therefore submits that no interference is warranted in the view taken by the School Tribunal.

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4 Writ Petition No.3397 of 2018 decided on 13 January 2023

12) Lastly, Mr. Jadhav invites attention of the Court to order dated 17 March 2026 passed by the Division Bench of this Court in Writ Petition No.3603 of 2019 by which the Management has been directed to send proposal to the State Government for seeking approval to the appointments of the Respondents. He therefore submits that the Petitioner be directed to reinstate the Respondent No.1 in service so that proposals of the Management can be considered and decided by the State Government. He prays for dismissal of the Petitions.

13) I have considered the submissions canvassed by the learned counsel appearing for the parties.

14) The main issue which arose for consideration before the School Tribunal, and which again arises before this Court, is whether the appointments of the Respondent-Teachers were permanent on probation basis or whether they were merely temporary appointment made awaiting allotment of surplus teachers or NOC from the Education Department. Ordinarily, the nature of appointments can be gathered from the terms and conditions of an appointment order. However, in the present case, none of the parties have produced appointment orders of the Teachers. Mr. Limaye has contended that no appointment orders were issued to the Respondent-Teachers since their engagements were made purely on temporary basis. On the other hand, it is the pleaded case of the Petitioners that regular appointment orders were issued to them, but the then Headmaster collected back the appointment letters on the pretext of effecting corrections. Thus, neither Petitioner nor Respondent-Teachers

have produced even photocopies of appointment letters of both the Respondent-Teachers. Though appointment orders could not be produced, there is no dispute to the position that Respondent-Teachers discharged duties and responsibilities during the four Academic Years 2015-16 to 2018-19. In absence of production of appointment letters, the School Tribunal has proceeded to hold that the appointments were made on regular basis on probation. The Tribunal has drawn adverse inference against the Petitioner- Management for non-production of appointment orders by it. The relevant findings recorded by the Tribunal in this regard are as under:

Apart, the appellant could not produce her appointment order as the same were given to the then Head Master for correction and alleged to have not been returned. The respondent management could have produced the order of appointment on record. However, in place of the order of appointment, the respondent management preferred at belated to produce the minutes of meeting, appointing the appellant temporary basis. on The respondent management has not pleaded nor led to infer the reason for withholding or not producing the order of appointment. Therefore this Tribunal draws as adverse inference that the order of appointment is not suitable to the the stand of the respondent management and factual presumption against the order of the appointment of the appellant but the respondent management by its own conduct discharged the burden of proof on the appellant that her appointment was on probation.

15) As observed above, it is the case of the Petitioner-Management that appointment letters were not issued to the Petitioners whereas Respondent-Teachers contended that the issued appointment letters were taken back from them. The pleadings in para-7 of the Appeal are as under :

7. The Appellant submits that though she was given an appointment order by the Respondent Management thereby appointing the but the Respondent Management through the then Headmaster asked the Appellant to return the said appointment letter since she was informed that the said appointment letter needs some corrections. The Appellant submits that she immediately handed over the said appointment letters but the Appellant till date has not received the corrected appointment order. Therefore, the Appellant crave leave to refer to and rely on the said appointment letters as and when is produced before this Hon'ble Court.

16) The Petitioner denied the averments in para-7 of the Appeal and pleaded in the Written Statement by stating as under :

22. With respect to Paragraph 7, the Respondents deny all the allegations as false and vague. It is pertinent to note here that Appellant was appointed as a temporary teacher on consolidated salary with stop gap arrangement and not as Shikshan Sevak as Claimed by the Appellant.

17) Though the Respondent-Teachers craved leave to produce appointment orders, the same were admittedly not produced and have not been produced even before this Court. This Court finds the story pleaded in para-7 of the Appeal Memo to be unbelievable. Three teachers were appointed by the Management for the subjects of Secretarial Practice, Economics and English. It is unbelievable that none of the three Teachers took even a photocopy of the alleged appointment orders issued to them. It is not the case of the Respondent-Teachers that the appointment orders were merely shown to them and immediately taken back by the Headmaster. Para-7 of the Appeal is silent about the date of issuance of the appointment orders and the date on which the same were allegedly collected back by the Headmaster. On the other hand, the case of the Petitioner-Management of non-issuance of appointment orders for

temporary engagements on academic year basis appears to be more believable as such case draws support from the resolutions adopted by the Management every year and which are discussed in greater details in the latter part of the judgment. In the present case, the Management did not send proposal to the Education Department, which is yet another indicator for absence of intent to make regular appointments on probation.

18) In my view, the School Tribunal has erred in drawing an adverse inference against the Petitioner-Management on account of non-production of letters of appointment of Respondent-Teachers. It was the case of the Respondent-Teachers that they are appointed on regular basis and therefore the burden was on their shoulders to prove the same. The Tribunal erred in believing the story of the Respondent-Teachers that the Headmaster collected back the alleged appointment letters on the pretext of correction in absence of any documentary evidence in that regard. If the appointment orders were indeed collected by the Headmaster, at least one out of the 3 teachers ought to have protested or contemporaneously written a letter complaining about such action of the Headmaster. Respondent-teachers were in service for 4 years and it is unbelievable that for 4 long years, they maintained silence in respect of the alleged action of the Headmaster in collecting back the appointment letters. More importantly, the Respondent-Teachers filed Writ Petition in this Court in the year 2019 and at least at that stage they ought to have raised a protest in respect of the alleged action of the Headmaster in collecting back the alleged appointment letters. The finding recorded by the School Tribunal

that the appointments were regular on the basis of adverse inference against the Petitioner-Management, is thus a mere surmise.

19) Another reason, which in fact is the main reason for holding the appointments to be regular and permanent by the School Tribunal, is the fact that the same were made against permanent vacancies. There is no dispute to the position that the vacancies against which appointments were made were permanent in nature. There is also no dispute to the position that the Petitioner-Management did not make appointments of Respondents as per its whims and caprices and issued advertisement for making those appointments. However, since selection process was followed by issuance of advertisement and appointments are made on permanent basis, the School Tribunal has proceeded to hold that the appointments have to be necessarily permanent by rejecting Petitioner's plea that the same were temporary. The relevant findings recorded by the School Tribunal in this regard are as under:

15.4 In the present case, the respondent management in appointing the vacancy on superannuation followed the procedure of ascertaining the surplus on the list of the Dept. The advertisement was published to fill up the vacancy. It is not the case of the respondent management that the appellant was terminated for want of satisfactory work or behavior. But, it appears that the plea has been raised that the vacancy was temporary as the Dept. did not reply to providing surplus nor responded to No Objection for recruitment. The appointment of the appellant were purely temporary for fixed period. The Non permanent category of employee is divided as temporary or probationer. the A temporary employee is one who is appointed on the temporary vacancy Tor a fixed period. On the other hand, probationer is appointed against permanent vacancy. Therefore, the ultimate plea of the respondent management is that for the want of no objection of the Dept of surplus, there can not be the appointment as a probationer. Further, it is necessary to consider the legal consequence of appointment without the ascertaining for surplus or No Objection of the Dept. The Dept under the circumstances,

may refuse the approval. It is the settled position of the law that want of approval is not the condition precedent to validate the appointment. This tribunal holds that the appointment against the permanent vacancy will not be an appointment on temporary vacancy" for want of No Objection for recruitment or response of the Dept for ascertaining the surplus. What is a temporary vacancy is not defined under the MEPS Act or Rules. But, it is certain from Rule 10 of the MEPS Rules that a temporary employee is appointed on a temporary vacancy for a fixed time. Further, Schedule D providing for the no order of temporary appointment worded as, "2. Your appointment is purely temporary for a fixed period of...months/years from... to.... in the leave/deputation vacancy. After expiry of the above period, your services shall stand terminated without notice." Therefore, the contemplated temporary appointment may be in leave/deputation vacancy. In the present case, the appointment is for the vacancy arose out of superannuation and not leave/deputation.

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16. The appointment of the appellant was against the clear and permanent vacancy. The excuse of appointing the appellant for 3 years as a temporary employee that the Dept did not give NOC for recruitment is of no help. The Education Dept did not step ahead to contest the appeal in any way. The appellant must be appointed as a probationer as the appointment was against the clear and permanent vacancy. Further more, the respondent management did not produce the relevant appointment order or record. Therefore, the pleading of the respondent management that the appointment was temporary for temporary post for want of NOC or resolution that the appointment of the appellant was temporary does not hold good. The admitted position is that the appellant served in the respondent junior college for 2015-218 as claimed for. Once it is held that the appointment was against the clear and permanent vacancy for probation, the service of 3 years leads the deemed permanency as provided under Section 5(2A) of the MEPS Act. The appellant claimed her clean service without any occasion for notice or memo. The respondent management barely refuted it but has not produced any notice or memo on substantiate that the record ACR or to services of the appellant were not blotless. Therefore, the appellant appears to be entitled to claim the deemed permanency.

20) Perusal of the above findings would indicate that the Tribunal has contradicted itself in holding that the appointments were not temporary (and the same were permanent) and that the Respondent-

teachers are entitled to claim 'deemed permanency'. The question of operation of deeming fiction of permanency would come into play only when the appointment is made ostensibly on temporary basis. Therefore, the fact that the Tribunal has upheld the claim of Respondent-Teachers for 'deemed permanency' necessarily means that they were appointed on temporary basis. Treatment of appointment since inception as permanent is a concept different and distinct from the concept of treating a temporary appointment as permanent by invoking the doctrine of 'deemed permanency'. If somebody is already permanent, there is no question of invocation of doctrine of deemed permanency. If an employee is issued temporary appointment order but satisfies the Court that the appointment was permanent for all practical purposes, the Court can issue a declaration that the temporary appointment is deemed to be permanent. However, such finding proceeds on an assumption that the appointment was initially made temporary. In the present case, the Tribunal has arrived at a finding that the appointments were made on permanent basis and on probation. Therefore, the contradictory finding of deemed permanency cannot be countenanced.

21) Leaving aside the issue of internal contradiction in the findings relating to permanency in the impugned judgment and order of the Tribunal, this Court is otherwise not able to uphold the findings recorded by the Tribunal that the appointments were permanent since inception. Firstly, the Tribunal has erred egregiously in holding that since appointments are made against permanent vacancies, the same will have to be necessarily permanent and on probation. This finding of the

Tribunal is in the teeth of ratio of judgment of Full Bench of this Court in ***Ramkrishna Chauhan*** (supra) in which it is held as under :-

18. A prior, we have no hesitation in taking the view that neither Section 5(1) nor 5(2) of the Act can be construed as forbidding the Management from making an appointment on contractual or temporary basis for a limited duration against a permanent vacancy until a suitable candidate is selected. Further, there is nothing in these provisions to indicate that every appointment made by the Management, in relation to a permanent vacancy, must be deemed to have been made on probation for a period of two years. There is no such legal fiction unlike in the case of a person appointed “on probation” for a period of two years, is deemed to have been confirmed, upon completion of that period. In other words, the parties would be bound by the terms and conditions stated in the letter of appointment, as there can be no presumption of appointment having been made “on probation” unless expressly stated in the appointment letter itself.

22) The Tribunal has however distinguished the Full Bench judgment in ***Ramkrishna Chauhan*** by holding that since Management withheld the appointment orders, the judgment is of no avail to the Petitioner-Management. However, the Tribunal did not bother to discuss the ratio of the Full Bench judgment in ***Ramkrishna Chauhan*** and has recorded findings contrary to the ratio of the said judgment that temporary appointments can be made against permanent vacancies. The Full Bench judgment in ***Ramkrishna Chauhan*** recognizes right of the Management to make temporary appointments against permanent vacancies. Of course, the Full Bench has imposed some caveats on the Management for making temporary appointments against permanent posts which are (i) impermissibility to reject candidates in selection process on the ground of suitability and then appointing some other person on contractual/temporary basis for academic sessions on year to year basis, (ii) recording of subjective satisfaction for taking conscious

decision to appoint duly qualified persons on temporary basis for limited period against permanent vacancy and (iii) legal obligation to initiate process for appointing duly qualified suitable person against permanent vacancy on probation at the earliest.

23) Reverting to the issue of nature of appointment of Respondent-Teachers, it is seen that the Management placed before the Tribunal several resolutions in support of its plea that the decision to engage temporary teachers was taken awaiting surplus teachers/NOCs from the office of the Deputy Director. There is no dispute to the position that before appointments of the Petitioners, several letters were issued by the Petitioner-Management to the office of the Deputy Director of Education, Mumbai requesting for sending surplus teachers or for grant of NOCs to fill up the posts on its own. It is also an admitted position that the office of the Deputy Director neither sent surplus teachers nor granted NOC to the Petitioner-Management. The Petitioner-Management was also scrupulous in sending letters every time a new vacancy arose with retirement of teachers. The case thus does not involve creation of a false picture only for the purpose of making appointments by Management on its own by bypassing the requirement under Section 5(1) of the MEPS Act. Since the office of the Deputy Director of Education failed to send surplus teachers or grant NOC, the Management finally decided to engage temporary teachers for the Academic Year 2015-16. The Resolution adopted in the meeting held on 25 July 2015 is as under :

विषय क ४: रिक्त पदासाठी नवीन नियुक्तीबाबत याविषयी प्राचार्यांनी माहीती दिली कि खालील विषयांसाठी (एस.पी. इंग्रजी व अर्थशास्त्र) पदे रिक्त आहेत त्यासाठी मा. उप संचालक यांचेकडे NOC मिळविण्यासाठी अर्ज केला आहे, परंतु सन २०१४-१५ ची संच मान्यता न

झाल्यामुळे त्याबाबत कोणतीही कार्यवाही झालेली नाही परंतु विद्यार्थ्यांचे नुकसान होवू नये म्हणून तात्पुरती शिक्षकांची नियुक्ती करणे आवश्यक आहे.

ठराव: याविषयी असे ठरले कि तात्पुरती शिक्षकांची नियुक्ती करावी. जेणे करून मुलांचे नुकसान होणार नाही. त्यासाठी शिक्षकांची नियुक्ती रु. ८५००/- ह्या मानधनावर करावी याविषयीचा निर्णय शालेय समिती सदस्यांनी द्यावा असे ठरले.

**24)** Since the surplus teachers/NOC was not received even for the Academic Year 2016-17, Resolution was adopted in the Meeting held on 29 April 2016 as under:

विषय विष क. ३ शिक्षक पुनः नेमणूकीबाबत.

याविषयी श्री. चौधरी यांनी माहिती दिली खालीलप्रमाणे शिक्षक तात्पुरत्या स्वरूपाची नियुक्ती करण्यात आली होती तरी सदर शिक्षकांची पुनः नियुक्ती विषयी सभेने निर्णय घ्यावा.

१) श्रीम. अर्चना S.P.

२) श्रीम. मनीषा राजपूत Economics

३) श्रीम. बाजूषा भसाळ English

संबंधित उपरोक्त शिक्षकांचा कामाचा अहवाल समाधानकारक आहे. परंतु अंतर्गत वाद असल्यामुळे मुलापर्यंत चांगला संदेश जात नाही व त्यामुळे अभ्यासावर व इतर कार्यक्रमात त्यांच्या परिणाम दिसून आला. श्री. पुराणिक यांनी सुध्दा सर्व शिक्षकांसोबत संपर्क करून समाधानकारक अहवाल सादर केला.

परंतु अंतर्गत वादाच्या मुदयावरून नवीन शिक्षकांची नेमणूक करावी असे सर्वांनुमते ठरले.

**25)** Again fresh Resolution was adopted for the Academic Year 2017-18 as under :

विषय क्र.४:- उच्च माध्यमिक विभागातील शिक्षकांबद्दल

उच्च माध्यमिक विभागातील शिक्षकांच्या नेमणुकीचा विषय पुन्हा एकदा या शालेय समितीमध्ये विचारार्थ घेतला आहे.

मागील दि. २८/४/१७ च्या सभेमध्ये त्यांची पुढील वर्षासाठी म्हणजे २०१७-१८ या वर्षासाठी पुन्हा नियुक्ती करण्याचे ठरले आहेत. पण पुन्हा नियुक्ती करण्यापूर्वी त्यांचा interview घेण्यात यावा असे ठरले, याबाबत खालील ठराव संमत करण्यात आला.

ठराव :-

ही शालेय समिती सभा आज रोजी असा ठराव संमत करत आहे की, उच्च माध्यमिक विभागातील शिक्षकांच्या ७ जून २०१७ रोजी मुलाखत घेऊन पुन्हा नव्याने त्यांची नियुक्ती करण्यात यावी.

ही नियुक्ती या वर्षासाठी तात्पुरत्या स्वरूपाची आणि शिक्षण उपसंचालकांचे आदेश ना हरकत प्रमाणपत्रास अधिनस्थ राहून करण्यात यावी असे ठरले.

26) Lastly, in the Meeting held on 30 April 2019, Petitioner-Management decided to discontinue the services of the Respondents by adopting following Resolution:

विषय क २: न्यू कॉलेज शिक्षकांच्या पुढील वर्षाच्या नेमणूकीबाबत-

न्यू कॉलेज शिक्षकांची खालीलप्रमाणे शिक्षकांची

१. श्रीमती मनिषा राजपूत (Economics)

२. श्रीमती बाळकृष्ण भासळ (English)

३. श्री. विकास बरकडे (B.K.)

४. श्रीमती रेखा बागवे (S.P.) या शिक्षकांची सेवा तात्पुरत्या स्वरूपाची असल्यामुळे दि. ३० एप्रिल पासून खंडित करण्यात आली.

आणि त्यांच्या पुढील वर्षाच्या नेमणूका या आता शासनाच्या पवित्र पोर्टलच्या माध्यमातून होणार आहेत तसेच याबाबत चा निर्णय व्यवस्थापक मंडळाच्या सभेत घेण्यात येईल असे ठरले.

27) The above Resolutions were placed before the School Tribunal. However, it has proceeded by recording an illogical finding that *'however in the place of order of appointment, Respondent-Management preferred at belated to produce the Minutes of Meeting appointing the Appellant on temporary basis. The Respondent-Management has not pleaded or leaded to infer the reason for withholding or not producing the order of appointment'*. One more place where the Resolutions find mention by the Tribunal is in para-12 in which it is held by the Tribunal as under :

12.The appellant claimed that she was issued the order of appointment. However, in the pretext of correction it was taken back by the then principal. Rule 9 (5) of the MEPS Rules requires the order of

appointment as prescribed under Schedule D There is no discrimination as order of appointment in the prescribed form as a temporary employee or probationer. The respondent management disputed contending that the appellant was given the appointment as a temporary employee for fixed period of 11 months. The appellant could not produce on record her order of appointment for the said reason of her parting with it for its correction. The appellant also claimed that she was not given any correct order of appointment. The respondent management denied that it was so happened. The respondent management contended that the appellant did not dispute her alleged withholding of order of appointment at no point of time before the appeal. It is apt to add here that the respondent management also has not produced on record any order of the appointment of the appellant. **The respondent management brought on record the resolutions of the management that the appellant were appointed on temporary basis. The appellant disputed such last minute production of document to be after thought. There is advertisement of the recruitment placed on record before this tribunal. respondent management also contested as that the appellant did not produce any document to show that she applied for the post and she was appointed for Economics. The said resolutions on record per se showing that the appellant was appointed for the subject of economics though allegedly on temporary basis.**

*(emphasis added)*

28) These are the only two places where the Tribunal took note of the Resolutions produced by the Petitioner-Management. The context in which cognizance of Resolutions is taken by the Management is entirely wrong. The Resolutions were produced to show as to why the Management was required to make temporary appointments. Instead of considering the Resolutions in the correct context, the School Tribunal has used them for inferring that the appointments were made in respect of particular subjects and that production of Resolutions did not absolve the Petitioner-Management of responsibility of producing the appointment orders. Thus, the manner in which the entire inquiry is conducted by the Tribunal is faulty.

29) Considering the manner in which the appointments of Respondent-Teachers were made, this Court is satisfied that the Petitioner-Management made genuine efforts for filling up vacant posts arising out of superannuation through surplus teachers available with the office of Deputy Director. This Court has repeatedly castigated the Education Department of the State for not sending surplus teachers despite receipt of requisitions from School Management. This is a classic case where the office of the Dy. Director did not send even a single surplus teacher to the Petitioner-Management despite writing several letters. This Court does not appreciate this course of action of the office of Dy. Director since the State Government is required to bear the burden of paying salaries to the surplus teachers without extracting any work from them. When requisition was sent for deputation of 3 surplus teachers, the office of the Dy. Director ought to have acted with the necessary alacrity and saved the financial burden of paying salaries to 3 surplus teachers from whom work could have been extracted by posting them in Petitioner-College. Be that as it may, the action of the office of the Dy. Director is not the subject matter of challenge in the present petition. The limited remit of inquiry is whether the appointments of Respondent-teachers were temporary or permanent. From the factum of Petitioner-Management sending repeated letters to the office of the Dy. Director for surplus teachers/NOC and several Resolutions passed by the Management, it is clear that the appointments of Respondent-Teachers were made as a stop-gap arrangement till receipt of surplus teachers or NOC from the office of the Dy. Director.

30) Ordinarily, this Court is flooded with petitions filed by the Management and teachers where the Management makes permanent appointment after non-receipt of response from the Education Department for deputation of surplus teachers. When proposals are sent in respect of the such permanent appointments, the same are rejected by the Education Officer on the ground of non-procurement of prior NOC. This Court has time and again held that the School Management is not supposed to wait endlessly for issuance of NOC and where requisition for surplus teachers/NOC is not responded within reasonable time, the Management is entitled to make a permanent appointments. In fact, the judgments of this Court relied upon by Mr. Jadhav in ***Vidarbha Youth Welfare Society*** and ***Samidha Nimkar*** are illustrations of such petitions filed before this Court. However, the present case involves a distinct situation. The case does not involve making of a permanent appointment by Management after awaiting response from the Education Department and rejection of proposal by the Education Officer. The case, on the other hand, involves making of a temporary appointments by the Management who has prudently waited for deployment of surplus teachers by the Education Department. Merely because an engagement is made to temporarily man a permanent vacancy awaiting response to requisition of surplus teacher it cannot be inferred that in every case such appointment has to be permanent. In a given case, the Management can make a permanent appointment after non-receipt of response to requisition of surplus teacher but it is not necessary that in every case the Management is bound to make only permanent appointment when response is awaited from Education Department on requisition of surplus teachers. On the

other hand, it is more prudent to make a temporary appointment after sending requisition for surplus teachers. It happens that the Education Department takes some time to deploy subject specific surplus teachers. However, this does not mean that the Management can merely send requisition and immediately proceed to make permanent appointment against available vacancy.

31) In the present case, the contemporaneous documentary evidence clearly proves that the appointments of Respondent-Teachers were made on temporary basis awaiting response of Education Department on requisition for surplus teachers. The Tribunal has egregiously erred in assuming that because advertisement was issued and because appointments were made against permanent posts, the same were necessarily permanent.

32) As observed above, reliance of Petitioners on judgment of this Court in ***Vidarbha Youth Welfare Society, Rajan Sahadeo Ratul*** and ***Samidha Nimkar*** does not assist the case of the Respondent-teachers. In ***Vidarbha Youth Welfare Society*** this Court has dealt with a case where permanent appointment was made by the Management after awaiting response from Education Department. Similar was the issue in ***Rajan Sahadeo Ratul*** where proposal for approval to the appointment of permanent teacher was rejected on the ground of non-securing of NOC. This Court held that the Management had resorted to permanent appointment of the Petitioner therein only after failure to nominate surplus teacher by the Education Department. In ***Samidha Nimkar*** also, proposal for seeking NOC was sent by the Management on 22 June 2015

and appointment of regular teacher was made on 21 January 2016 due to non-receipt of response to the requisition for surplus teachers/NOC. The present case does not involve issue of rejection of proposal for failure to seek NOC. On the other hand, the case involves determination of nature of appointment of the Respondent-teachers. This Court is convinced that the appointments were made on temporary basis and Management had no intention of making permanent appointments. The Tribunal has erred in drawing the presumption of permanent appointments merely because advertisement was issued and merely because permanent vacancies existed. Reliance by Mr. Jadhav in *Abdul Rafique Abdul Hamid Versus. Yavatmal Islamia Anglo Urdu Education Society and others*<sup>5</sup> also does not cut any ice. This Court held in para-21 of the judgment as under:

21. The law laid down by the Apex Court in the cases of Hindustan Education Society and Bharatiya Gramin Punarrachana Sanstha, cited supra, cannot be disputed. However, it was not a case before the Apex Court as regards treating the appointment as on probation, though the order stipulates that it is on temporary basis or for a fixed period. The question of enforcement of obligation under sub-section (2) of section 5 in a case where there was compliance of subsection (1) of section 5 of the MEPS Act and no further explanation was offered by the Management to make an appointment on temporary basis, was not involved. The question of jurisdiction of the School Tribunal under section 9 of the MEPS Act to consider and decide the question as regards treating the appointment made on temporary basis or for a fixed period in a permanent vacancy, as one on probation in the given facts and circumstances of the case, was also not involved. Hence, both the said decisions cannot be considered to be an authority for the proposition involved in the present case. The power of the Management to appoint a person on temporary basis in a permanent vacancy, cannot be disputed, but the power of the School Tribunal under section 9 of the MEPS Act to find out as to whether such appointment should be treated as one on probation, in the facts and circumstances of the case, cannot be questioned.

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33) This Court thus recognized the right of the Management to make temporary appointments against permanent posts. However, this Court has recognised the jurisdiction of the School Tribunal to conduct inquiry as to whether such temporary appointment can be treated as the one on probation in the facts and circumstances of each case. There can be no dispute about this proposition. If Management makes this permanent appointment but deliberately treats it as temporary, the School Tribunal is not divested of jurisdiction to conduct an inquiry into the nature of appointment and arriving at a finding that the same was actually made on probation. In the present case, however there is no material to infer that the appointments were made permanently on probation. On the other hand, there is ample material to infer that the appointments were on temporary basis.

34) Considering the overall conspectus of the case, this Court is of the view that the School Tribunal has erred in allowing the Appeals preferred by the Respondent-teachers. The School Management has acted with due prudence in the present case and made temporary engagements with a view to ensure that students do not suffer on account of its inability to make permanent appointments due to lack of response from Education Department. Instead of appreciating the conduct of the Petitioner-Management, the School Tribunal has erroneously held that the appointments of Respondent-Teachers were made on permanent basis. The nature of inquiry conducted by the Tribunal is faulty. The conclusions arrived by it are perverse and therefore the order of the Tribunal is indefensible.

35) This Court would have been justified in simply setting aside the impugned judgments and orders of the School Tribunal. However, during the course of hearing of the petitions, a query was put to Mr. Limaye as to whether the Management is willing to compensate the Respondents. Considering the peculiar facts and circumstances of the present case and in usual fairness, Mr. Limaye, on instructions, has made a statement that the Management is willing to offer compensation of Rs.5,00,000/- to each of the Respondent-teachers. This offer is recorded by this Court while reserving the judgment vide order dated 26 March 2026. In my view, while allowing the petitions and while setting aside the impugned judgments and orders of the Tribunal, it would be appropriate to direct the Petitioner-Management to pay to the Respondent-teachers, lump-sum compensation of Rs.5,00,000/- for loss of job by them. It is however clarified that this course of action is taken in the light of unique facts and circumstances of the present case and also by taking into consideration the fair offer made by the Petitioner-Management. The same shall not be treated as a precedent in any other case.

36) Resultantly, the petitions succeed and I proceed to pass the following order :

- (i) Judgments and orders dated 19 April 2021 passed by the Presiding Officer, School Tribunal, Mumbai in Appeal Nos. 15 of 2019 and 16 of 2019 are set aside.
- (ii) Petitioner-Management shall pay to Respondent No.1 in both the petitions, lump-sum compensation of Rs.5,00,000/- each as full and final settlement in respect of the services rendered

by them during Academic Years 2015-16 to 2018-19. Beyond the lump-sum compensation so paid, Respondent No.1 in both the petitions shall not be entitled to any other benefits from the Petitioner-Management or from the State Government.

37) With the above directions, the petitions are **partly allowed**. Rule is made partly absolute. There shall be no order as to costs.

Digitally  
signed by  
NEETA  
SHAILESH  
SAWANT  
Date:  
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+0530

**[SANDEEP V. MARNE, J.]**