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

WRIT PETITION NO.1438 OF 2013

PETITIONER

- 1) Sharda Mahila Mandal Murmadi (Tupkar), Tq. Lakhni, District Bhandara through its Secretary, Smt. Prabhavatibai K. Kathane
- 2) Rashtra Mata Indira Gandhi Kanya Vidyalaya, Murmadi (Tupkar), Tq. Lakhani, District Bhandara.

...VERSUS...

RESPONDENTS

- 1) Pandurang Chintaman Parate, aged about 40 years, occupation nil, r/o Palandur Chouras, Tq. Lakhandur, District Bhandara.
- 2) The Education Officer (Secondary), Zilla Parishad, Bhandara.

Dr. R.S. Sundaram, Advocate for the Petitioners.
Mr. N.A. Lapalikar, Advocate for Respondent No.1.
Ms. D.V. Sapkal, AGP for Respondent No.2/State.

WITH

WRIT PETITION NO.6609 OF 2013

PETITIONER

- :- Pandurang Chintaman Parate, aged about 43 years, Occupation - Nil, resident of Palandur (Ch.), Tah.Lakhandur, Dist. Bhandara.

...VERSUS...

RESPONDENTS

- 1) Sharda Mahila Mandal, Murmadi (Tupkar), Tahsil Lakhani, District Bhandara, through it's

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Secretary Smt.Prabhavati Keshavrao Kathane, at post Murmadi (Tupkar), Tahsil Lakhani, District Bhandara.

2) Rashtramata Indira Gandhi Kanya Vidyalaya, Murmadi (Tupkar), Tah. Lakhani, District Bhandara, through it's Head Master.

2) Education Officer (Secondary), Zilla Palrishad, Bhandara.

Mr. N.A. Lapalikar, Advocate for the Petitioner.
Dr. R.S. Sundaram, Advocate for Respondent Nos.1 and 2.
Ms. D.V. Sapkal, AGP for Respondent No.3/State.

<u>CORAM</u>	<u>:- PRAVIN S. PATIL, J.</u>
<u>RESERVED ON</u>	<u>:- 13/10/2026</u>
<u>PRONOUNCED ON</u>	<u>:- 30/10/2026</u>

JUDGMENT :

1. Heard learned counsels for the respective parties.
2. Both these petitions are arising out of the common judgment dated 06.12.2012 passed by the learned Presiding Officer, School Tribunal, Nagpur, in Appeal No.STC/39/2001. As the common judgment is under challenge in both these petitions and the parties are also identical, accordingly, both these petitions are being decided by passing this common judgment.

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3. In the present case, for the sake of brevity, the Management of the School is hereinafter referred to as the “petitioner” and the Employee is hereinafter referred to as the “respondent”.

4. In the Writ Petition No.1438 of 2013, the Management of the School has challenged the judgment and order passed by the learned School Tribunal in its entirety, by praying that the same may be quashed and set-aside. In the Writ Petition No.6609 of 2013, the employee has approached before this Court, challenging the judgment of the learned School Tribunal, to the extent of rejecting his claim of backwages from the date of termination, till the date of his reinstatement. In the present matter, to consider the controversy involved in these petitions, the certain facts are necessary to be recorded, which would be beneficial to draw the proper conclusion in the present matter.

5. It is an undisputed fact that the respondent-employee possessing the qualification as BA.B.Ed. On 07.12.1996, the respondent-employee has moved an application to the petitioner-Management, for granting appointment as an “Assistant Teacher” for the available vacant post. In the said application, he has given his details of qualifications, caste, date of birth, etc.. He has also enclosed his caste certificate issued by the Executive Magistrate dated 31.08.1988, whereby, it is stated that

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he belongs to to caste of “Halba” which is recognized as a “Scheduled Tribe”.

6. The petitioner-Management, by accepting his application, granted him appointment as an “Assistant Teacher”, for a period of five months from 09.12.1996 to 31.04.1997. In view of the said appointment order, the respondent-employee, joined the post of “Assistant Teacher”. After joining the post, his proposal was forwarded by the Head-Master of the School to the Education Officer on 25.02.1997. The said proposal was approved by the Education Officer, by his order dated 11.04.1997 and thereby, granted approval to his appointment for the period from 21.01.1997 to 20.01.1998.

7. It is further pertinent to note that in view of the approval granted by the Education Officer, for a period exceeding his tenure of appointment, the petitioner-Management on 10.01.1998, has resolved that the Education Officer has granted approval to the appointment of respondent-employee from 21.01.1997 to 20.01.1998 and furthermore, they found that respondent is good in teaching, Management decided to re-appoint him, for probation period of two years. Accordingly, a fresh proposal was forwarded to the Education Officer on 10.02.1998, stating that as the approval was already granted to the appointment of

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respondent-employee, considering the resolution of Management, proposal of approval be considered as a Probationer.

8. The Management along with proposal enclosed a copy of the details showing the vacancies filled-in in the School. As per the said details provided by the Management, it is seen that at the time of forwarding the proposal of respondent-employee, there was one post filled-in from Scheduled Caste Category (in short "SC Category"), one post from Scheduled Tribe Category (in short "ST Category") i.e. respondent-employee and six persons from Other Backward Classes Category (in short "OBC Category") and one from OPEN Category. As such, nine posts were filled-in by the petitioner-Management.

9. It is further seen from the record that after forwarding the proposal of respondent-employee on 10.02.1998, a further, communication was made with the Education Officer, requesting to grant approval to the appointments of respondent-Employee as well as one Shri S.R. Shivankar along with the respondent. The Education Officer, by his communication dated 19.05.1998 has communicated to the Head-Mistress of the School that the appointment of the respondent-employee had been made on 21.01.1998. But, one appeal filed by Shri P.J. Bhoyar, was pending before the learned School

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Tribunal and therefore, approval cannot be granted to the appointment of respondent-employee.

10. After receipt of the aforesaid communication from Education Officer, the Secretary of the Management, on 15.06.1998 clarified to the Education Officer, that appointment of the respondent-employee was made on the post reserved for ST Category. The appointment of Shri P.J. Bhoyar, was made as an “Untrained Graduate Teacher”. It is also clarified to fill-up the backlog of reservation, as per the directions of the Education Officer, the appointment of respondent was made in the School. It is also pointed out that Education Officer, had already granted approval to the appointment by order dated 11.04.1997. Hence, considering this fact, the approval be granted to the appointment of respondent-employee.

11. The Secretary of the Management, also by his further communication dated 27.06.1998, informed the Education Officer, that the appointment of respondent was never made on the post occupied by Shri P.J. Bhoyar. The appointment of respondent-employee was against the post reserved for ST Category and appointment of Shri P.J. Bhoyar, was on OBC Category, as he was belonging to the OBC Category. Hence, considering this fact, the approval be granted to the appointment of respondent's services.

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12. It is pertinent to note that in view of the communication from the Education Officer of not granting approval, the Head-Master of the School restrained the respondent-employee to attend the School. Therefore, considering the same as an otherwise termination, the respondent-employee filed an appeal No.STC/73/1998 before the learned School Tribunal, Chandrapur.

13. In the said appeal, the Management came with the specific stand that they have never terminated the services of respondent-employee. According to them, the Head-Master of the School, by exceeding his jurisdiction has illegally restrained the respondent-employee from attending the School. It is also stated in their reply that the appointment of the respondent-employee was made against the ST Category, to fulfill the backlog in the School. Hence, the prayer was made before the learned School Tribunal, that considering the fact that Management has never terminated the services of respondent-employee, an appropriate order be passed in the matter.

14. In view of this stand taken by the Management, the learned School Tribunal, by its order dated 31.09.1999, allowed the appeal filed by the respondent-employee, by recording the fact that the Management had withdrawn the termination order dated 23.06.1998. It is also recorded that as per the statement made by the Management, the

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respondent-employee joined the duty in the month of October-1998. However, as he was not granted regular salary and the School was receiving grant-in-aid, therefore, the Management was directed to make payment of the respondent-employee from the date of alleged termination dated 23.06.1998, till the date of order passed by the learned School Tribunal.

15. In the meantime, the Education Officer has conducted a hearing in his office on the issue of grant of approval to the appointment of respondent, on 31.12.1999. In pursuance of the said hearing conducted by him, he has issued the communication to the petitioner-Management and School stating that in view of pendency of the proceeding before the learned School Tribunal of one employee, in terms of Government Resolution dated 22.12.1995, if respondent-employee and the Management are ready to give an undertaking, the proposal of respondent-employee can be considered positively by his Office.

16. It is submitted that as the appeal was pending before the learned School Tribunal and the same was decided on 31.03.1999, the said undertaking was not tendered immediately by petitioner-Management as well as respondent-employee. However, on 15.07.1999, the Management-petitioner, has tendered an undertaking

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to the Education Officer, stating that judgment of the learned School Tribunal in appeal No.STC/73/1998 was delivered in favour of respondent-employee. It is further stated that the appeal of the employee, which is pending before the learned School Tribunal, if in that case, judgment is delivered against the Society, the Management is ready to bear all the responsibility of the salary of the employee. Thus, the judgment of the learned School Tribunal, will be binding on the Management and accordingly, the approval be granted to appointment of respondent-employee.

17. The Education Officer, by his communication dated 17.07.1999, addressed to the Head-Master of the School, stated that as per the circular of Director of Education dated 22.12.1995, the procedure for appointment of respondent-employee be carried out. In same communication it is also stated that as appointment was not made by resolution of School-Committee and same is in violation of MEPS Act & Rules, therefore, approval to the appointment of respondent-employee and Shri Shivankar, cannot be granted by his office. Again in the same letter, it is stated that as Shri Shivankar, is not possessing the requisite qualification for the post, the approval to his appointment from the date of his appointment i.e. 24.06.1997 is hereby rejected.

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18. The Head-Master of the School has replied to this communication of the Education Officer dated 17.07.1999 by tendering explanation on 24.07.1999 and stated that the stand of the Education Officer is confusing and contradictory. It is stated by the Head-master that the Education Officer, at one hand was rejecting the proposal of approvals of the employees on the ground that there is a backlog of reservation and if appointment are made to fulfill backlog of reservation, then same also rejected by the Education Officer.

It is stated that the appointment of respondent-employee Shri Parate, was made from ST Category to fulfill the backlog of reservation, same is also rejected. Hence, it is difficult to understand how the Education Officer is dealing in the matter. It is also stated that at one hand the Education Officer is stating that the appointment of respondent-employee shall be made as per the Circular dated 22.12.1995, particularly, when the appointment of respondent-employee was already made on a probation period of two years. He also stated that in respect of the appointment of the respondent-employee, he has already submitted the undertaking, but the same was not considered by his Office. Hence, considering all this controversy, the approval be granted to the appointment of respondent-employee.

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19. After the communication of the Head-Master to the Education Officer, the Education Officer, then issued further communication in the name of Head-Master of the School, dated 26.10.1999 and stated that in pursuance of the Government Circular dated 22.12.1995, procedure of appointment of respondent-employee be completed. In respect of Shri Shivankar, he has clarified that his approval is already rejected and the same shall be treated as rejected.

20. It would be relevant to record the fact that the circular issued by the Director of the Education, dated 22.12.1995, is in respect of appointment of a substitute employee in place, which lying vacant due to termination of service and appeal in that regard is pending before the learned School Tribunal. By this circular, it is clarified if no stay is operating against the termination, the Management, can make an appointment of another employee in his place, subject to final decision of the appeal of the learned School Tribunal.

21. In present case, it is submission of respondent-employee that his appointment was never made in place of Shri Bhoyar, and the same is clear from the Resolutions which were placed on record by the Management as well as from the communications addressed to the Education Officer.

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22. It is further submitted by the respondent-employee that the Education Officer was bent upon to grant approval only in-case the compliance of the circular dated 22.12.1995 is done by the petitioner as well as respondent-employee. Therefore, he was constrained to tender an undertaking to get approval to his services. However, respondent-employee stated that an undertaking tendered before the Education Officer, was only stating that as per the circular dated 22.12.1995 and the directions of the Education Officer, he is tendering an undertaking that person whose appeal is pending before the learned School Tribunal, if the said appeal is allowed in his favour and the place of respondent-employee was not available in the School, then he would be relieved from services. The respondent, specifically, stated that in the undertaking, he had never stated that his appointment was made against the post occupied by Shri Bhoyar. He has tendered this undertaking under the presumption that if any appeal is pending before the learned School Tribunal, and any appointment is required to be made in that contingency in view of circular dated 22.12.1995, his undertaking be considered and therefore, without accepting that his appointment was made in place of Shri Bhoyar, he has tendered the undertaking in the matter.

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23. After doing all these exercises, the Education Officer, by his order dated 31.12.1999 has granted approval to the services of the petitioner w.e.f. 18.09.1999, till further orders and subject to the decision of the Court. In the footnote, it is recorded that as per the circular of the Director of Education dated 22.12.1995, he is granting approval to the appointment of respondent-employee. In the order of this approval, it is nowhere stated that subject to the decision of appeal filed by Shri. Bhoyar, approval was granted to his services.

24. It is pertinent to note that on 27.02.2001, the learned School Tribunal, allowed the appeal No.STC/267/1996, filed by Shri Bhoyar, and thereby, directed the Management, to reinstate him against the post of “Assistant Teacher”, with continuity in services alongwith backwages.

25. After the decision of the learned School Tribunal, in the appeal filed by Shri. Bhoyar, the petitioner-Management has issued the communication dated 02.05.2001 to the respondent-employee informing thereby, that the respondent-employee should produce his caste validity certificate within a period of seven days. The petitioner on 05.02.2001, tendered his reply to the Management stating that he has already produced the certificate issued by the Taluka Magistrate stating that he is belonging to “Halba” Caste, which comes under ST Category.

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Further, he has been issued the appointment order and also his caste is recorded in his service book. Therefore, there is no reason to doubt his caste certificate in the matter. He requested to the petitioner-Management to inform him what is the reason to raise doubt about his caste certificate and if it is communicated, he will clarify the Management.

26. The Management has further issued a communication dated 11.05.2001 to respondent-employee and stated that he is avoiding to furnish the validity certificate. The respondent-employee has again replied the same on 14.05.2001, stating that if he told the reasons, for what purpose, the caste validity certificate is required, he will satisfy the Management and therefore, the reasons be communicated to him in the matter.

27. The petitioner-Management, thereafter, by impugned order dated 17.05.2001, has terminated services of the respondent-employee by stating that his appointment was made in view of the circular dated 22.12.1995 issued by the Director of Education. Hence, his services are terminated w.e.f. 17.05.2001.

28. The respondent herein initially approached before this Court by way of filing the Writ Petition No.1857 of 2001. According to him, as it was recorded in the impugned order that in view of a circular, PVF

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the termination order was issued, he approached before this Court. This Court, however, by order dated 25.08.2008, considering the fact that respondent-employee has an alternative remedy to challenge the termination order before the learned School Tribunal, permitted to withdraw the petition to approach before the learned School Tribunal.

29. Accordingly, the respondent-employee filed a statutory appeal before the learned School Tribunal, on 25.06.2001 raising various grounds to demonstrate that how his termination is illegal and without following the due procedure of law. Before the learned School Tribunal, the petitioner-Management raised a preliminary objection that the appointment of the respondent-employee was not made by following due procedure of law as contemplated under Section 5 read with Rule 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, (for short "MEPS Rules"). As such, on this preliminary issue, the petitioner-Management, prayed for dismissal of the appeal.

30. The learned School Tribunal, rejected the preliminary objection raised by the petitioner-Management and held that the appointment of respondent-employee was made by following due procedure of law. The said order was challenged by the petitioner-Management in Writ Petition No.3997 of 2010, before this PVF

Court. This Court, has disposed of the said petition by order dated 29.03.2011, observing that the learned School Tribunal, could decide the entire matter while deciding the validity of the termination order. The matter was at the relevant time was pending before the learned School Tribunal. Hence, this Court held that if the ultimate decision in the appeal, goes against the petitioner-Management, it is always open for the petitioner-Management to challenge the findings recorded by the learned Tribunal, before this Court, by filing a separate petition. Therefore, the petition was dismissed by recording that it will be open to petitioner-Management to challenge the judgment of the learned School Tribunal, after the decision of appeal on merits, if ultimate order goes against the petitioner-Management.

31. In the light of observations made by this Court, the learned School Tribunal, by the impugned judgment dated 06.12.2012 decided the appeal on its own merits and thereby, quashed and set-aside the impugned termination order issued by the petitioner-Management and directed to reinstate the respondent-employee to his original post with continuity of service but, without backwages. The Education Officer, was also recommended to consider the claim of respondent-employee for grant of approval at the earliest. In this

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background, the petitioner-Management, filed the present writ petition before this Court, by raising various grounds.

32. The prime submission of the petitioner-Management is that the decision on a preliminary issue was kept open by this Court and therefore, the said issue required to be decided in the present matter. It is stated that the appointment of the respondent-employee was not made by following due procedure of law as contemplated under Section 5 of the MEPS Act and therefore, the appeal was not tenable before the learned School Tribunal. However, according to the petitioner-Management, this issue was not dealt with by the learned Tribunal, while deciding the appeal on merits.

33. It is submission of the petitioner-Management that admittedly, the appointment of the respondent-employee was made against the post reserved for ST Category. He was directed to produce the caste validity certificate, but he failed to do so. Hence, it is clear that as the respondent-employee was not possessing the caste validity certificate, his services cannot be continued on the post which is reserved for ST Category.

34. It is further submission of the petitioner-Management that as per the directions of the Education Officer, the appointment of the respondent-employee was made in terms of the circular dated PVF

22.12.1995. However, in view of the reinstatement of Shri. Bhoyar, as per the judgment of the learned School Tribunal, the services of respondent-employee were required to be terminated. Accordingly, by the impugned termination order dated 17.05.2001 his services were terminated by the petitioner-Management.

35. The respondent-employee has stated that in the present matter, from the facts stated above, it is clear that the Education Officer, had directed the petitioner-Management to fulfil the backlog of reservation category in the School. It is clear from the record that there was no other person belonging to the ST Category other than respondent who was appointed from Schedule Tribe Category in the School. Therefore, his appointment was made specifically on the post of ST Category.

36. The respondent-employee further stated that considering his appointment under the reservation category, the Education Officer, had granted approval to his appointment by exceeding the period of his appointment order issued by the petitioner-Management. He further stated that the petitioner-Management, was satisfied with his work and therefore, vide Resolution dated 10.01.1998, by specifically recording the fact that the work rendered by the respondent-employee, during the

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period 21.01.1997 to 20.02.1998 be extra-ordinary decided to appoint him as a probationer in the School.

37. According to respondent-employee, the post on which he was appointed was a clear and vacant post. At the relevant time, the petitioner-Management, had clarified to the Education Officer that the respondent-employee is the only person appointed from the Reservation Category in the School to fulfil the backlog of reservation. Therefore, once these all factors are considered by the Management as well as the Education Officer, at this stage the objection cannot be raised that his appointment was not made as per Section 5 read with Rule 9 of the MEPS Rules.

38. It is further submission of the respondent-employee that in-cases where an employee has rendered the services for more than two years in the School, they have acquired the status of deemed confirmed employee. The Section 4(6) of the MEPS Act, mandates that services of the confirmed employee cannot be terminated without following due procedure of law. Hence, considering this statutory provision, his services cannot be terminated by the Management.

39. It is further pointed out by the respondent-employee that the petitioner-Management as well as the Head-Master of the School, time and again clarified to the Education Officer that appointment of
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respondent-employee was never made against the post of Shri. Bhoyar. It is submitted that Shri. Bhoyar, was belonging to the OBC Category, whereas, the appointment of the respondent-employee was made on ST Category. It is also stated that neither the resolution of the Management, nor the appointment order of the respondent-employee, it is disclosed that his appointment is made in view of the circular of the Director of Education dated 22.12.1995. Therefore, the reasons quoted in the impugned termination order is not justified in the facts and circumstances of the case.

40. Both the learned counsels, in support of their respective submissions have relied upon certain judgments of the Hon'ble Supreme Court of India as well as this Court.

41. The petitioner-Management has relied upon the judgments in the cases of (i) *Vijaya Deorao Nandanwar Vs. State of Maharashtra and Others* reported in *2010(2) Mh.L.J. 424*; (ii) *Berhampur University and Another Vs. Ganesh Chandra Behera and Others* reported in *2021 SCC OnLine Ori 2399*; (iii) *Mohit Kumar Vs. State of Uttar Pradesh and Others* reported in *2025 SCC OnLine SC 1125*.

42. The respondent-employee has relied upon the judgments in the cases of (i) *Sadique Hussain Sheikh Azim Qureshi Vs. Divisional Caste Certificate Scrutiny Committee, Nagpur and Others* reported in

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2011(2) Mh.L.J. 87; (ii) *Taranjitsingh I. Bagga Vs. Maharashtra State Road Transport Corporation, Amravati* reported in *2008(3) Mh.L.J. 743*; (iii) *Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Others* reported in *2013(6) ALL MR 902 (S.C.)*; (iv) *Bhojraj S/o. Narayan Parate Vs. Divisional Controller, Maharashtra State Road Transport Corporation, Nagpur* reported in *2011(1) Mh.L.J. 726*; (v) *Mahatma Phule Krida Prasarak Mandal, Solapur and Another Vs. Sumati Tukaram Kashid and Others* reported in *2011(1) Mh.L.J. 302*; (vi) *Sant Kabir Shikshan Prasarak Mandal, Aurangabad and Another Vs. Azhar Khan S/o. Azizurraheman Khan and Others*, in *Writ Petition No.10769 of 2015* along with connected petitions, *decided on 16/18 April, 2016*.

43. In the light of submissions of both the parties, the first issue which falls for consideration which was raised by the petitioner is whether the appointment of the respondent-employee, was made by following due procedure of law as contemplated under Section 5 read with Rule 9 of the MEPS Rules. In this regard, it would be relevant to note that the whole purpose of Section 5 of the MEPS Act, is that every vacant post shall be filled-in by appointment of a person duly qualified to fill such vacancy. The said provision also states that while filling-up such vacancy, the Management is required to verify whether there was

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any suitable person available on the list of surplus persons maintained by the Education Office, for absorption in other School. In the event of such person being available, the Management shall appoint that person in such vacancy.

44. Rule 9 of the MEPS Rules, prescribes the procedure which is to be followed by the Management while filling-up the teaching and non-teaching staff in the School. The Management is required to issue an advertisement and then by following the due procedure of law, shall make an appointment of the person so that the person at large should get an opportunity to participate in the recruitment exercise undertaken by the Management.

45. In the present matter, considering the facts, which are stated above, it is clear that in petitioner No.2-School, there was a backlog of reservation. The Education Officer, was insisting to fill-up the said backlog. It is also seen from the record that at the relevant time, as the petitioner-Management was not fulfilling the backlog, the Education Officer, was not granting the approval to the other appointments in the School. As such, the petitioner who belongs to the Schedule Tribe, was appointed in the School. The Education Officer, immediately granted approval to his appointment for a period of one year, though his appointment was made for a period of five months. Later on, the PVF

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Management, while passing the resolution specifically recorded that considering the work and behaviour of respondent-employee, was willing to continue his services in the School and decided to appoint him on a probation for a period of two years on permanent and vacant post, which was lying vacant reserved for ST Category in the School.

46. Considering these facts of the matter, in my considered opinion, as the respondent-employee was appointed in the year 1996 and was then continued in services upto the year 2001 and in all these years, the Management is consistently stating that his appointment was made against the ST Category on a clear and vacant post. Accordingly, the said appointment cannot be held illegal in the peculiar facts and circumstances of the present case, merely because procedure of advertisement and screening test was not followed in the matter.

47. It is correct to state that the appointment of employee should be as per the prescribed procedure as contemplated under Section 5 read with Rule 9 of the MEPS Rules. However, while considering the said provision, in certain cases, it would be relevant to consider the facts of the matter. In the present case, it is clear that the appointment of respondent-employee was made on a clear and vacant post. It is also clear that for fulfilling the backlog of reserved post, his appointment was made by the Management. So also, the Education
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Officer, has already granted approval to his appointment. It necessarily means there was no excess teacher from S.T. Category was available with the Education Officer. Therefore, merely because advertisement was not issued at the relevant time that too in the year 1996, the appointment of respondent-employee cannot be held illegal. At the most it can be said that the appointment of respondent-employee, was irregular but not *void-ab-initio*.

48. It is well settled position of law that if the appointment is irregular, the same can be regularized by the Management. Only in the case, where the appointment is *void ab initio* i.e. in the case where, the person was not qualified for the post or his appointment was not made on a clear and vacant post or the permission from the Education Officer was not obtained or any surplus teacher, though available in the list of the Education Officer, was not appointed, then, in that contingency, the appointment can be said to be *void ab initio*. But, here considering the facts of the present case, in my opinion, as per the direction of the Education Officer, to fulfill backlog appointment of respondent was made, appointment of respondent cannot be held illegal in the facts and circumstances of the matter.

49. In respect of the termination order, which was issued by the petitioner-Management, on the ground that his appointment was
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made as per the circular issued by the Director of Education dated 22.12.1995 and thereby, his services are terminated is contrary to the settled principles of law. It would be relevant to refer Section 4(6) of MEPS Act, which contemplates that the services of any employee cannot be terminated without following the due procedure of law. Hence, applying this statutory provision, the impugned termination order which is without following the due procedure of law, is liable to be quashed and set-aside.

50. The circular issued by the Director of Education dated 22.12.1995, is not having a statutory force. It was issued in an administrative capacity to clarify to Management what recourse should be available where the Management is in dilemma when vacancy is created due to termination of employee and the termination is under challenge before the learned School Tribunal.

51. In the present matter, it is no ones' case, from the date of the appointment of respondent-employee that his appointment was made in place of Shri. Bhoyar. On the contrary, the petitioner-Management as well as the Head-Master of the School, time and again clarified to the Education Officer that the appointment of respondent-employee was made on a clear and vacant post of ST Category, which was lying vacant in the School. It was also made clear that Shri Bhoyar,

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belongs to OBC Category was an “Untrained Graduate Teacher”. Hence, the appointment of respondent-employee cannot be considered on the place of Shri Bhoyar.

52. The third ground which is raised by the petitioner-Management, is that the respondent-employee failed to produce the caste validity certificate and therefore, they have decided to terminate his services. It would be relevant to note that in the impugned termination order, there is no such reason recorded that due to non-production of caste validity certificate, the services of respondent was terminated.

53. It is well settled principle of law that the Management cannot appended the reasons to the termination order, in a shape of affidavits or by any other means. The Hon’ble Supreme Court of India, in the case of *Mahendra Singh Goel Vs. Chief Election Commissioner*, reported in *1978(1) SCC 405*, has clearly laid down the law that while exercising the powers to judicial review, the Court has to judge the action of employer, on the basis of reasons stated while issuing the order. The statutory reasons in the shape of affidavits cannot be accepted by the Court while exercising the judicial review. Therefore, the reasons stated by the petitioner-Management at the outset, cannot be accepted in the matter.

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54. It is further pertinent to note that the respondent-employee has already furnished the caste certificate issued by the Executive Magistrate dated 31.08.1888, whereby, it is clarified that he belongs to the caste “Halba” which is recognized as Schedule Tribe. Therefore, the Management is at liberty to forward the said caste certificate for its verification to the Caste Scrutiny Committee and respondent-employee can contest the said proceedings and it will be then his burden to establish his caste claim before the Committee Members. Therefore, this cannot be a reason to state that the respondent-employee cannot be reinstated in services.

55. Learned counsel for the petitioner has relied upon the judgment of the Hon’ble Division Bench of this Court, as well as the judgment of the Hon’ble Supreme Court of India, stating that if the employee failed to produce a caste validity certificate, then he is not entitled for protection in employment. In my considered opinion, the said judgment are not helpful to Management in the facts and circumstances of the present case. Here, the Management has not forwarded the caste claim of the respondent-employee for verification of caste validity certificate and therefore, the apprehension of petitioner-Management that respondent-employee would not be in a position to produce the caste validity certificate is uncalled for.

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56. It would be relevant to refer the judgment of the Hon'ble Division Bench in the case of *Sadique Hussain Sheikh Azim Qureshi's case (supra)*, wherein, this Court has held that it is not open for the Appointing Authority, to avoid the step of referring the caste certificate for verification for the Caste Scrutiny Committee and issue the show-cause notice for taking action against the employee on the basis that the candidate does not belong to the Schedule Caste Category. The Hon'ble Division Bench has specifically recorded the findings in para No.10 of the said judgment, which reads as under :-

"10. We are thus of the view that sub-section (3) of section 6 confers on the appointing authority a power coupled with a duty to make an application to the concerned Scrutiny Committee for validation of the caste certificate of a person selected for appointment where such a person has not obtained such a validity certificate. It is not open for the appointing authority to avoid the step of referring such a caste certificate for verification to the Scrutiny Committee and issue a show-cause notice for taking action against an employee on the basis that the candidate does not belong to a Scheduled Caste, etc. howsoever justified the appointing authority may be in entertaining a doubt about the genuineness of a caste certificate."

57. Hence, considering the legal position, in my considering opinion, the submission of the petitioner-Management, that as respondent-employee, is not possessing the valid caste validity certificate, therefore, he cannot be reinstated in service, is not justified in the facts and circumstances of the case.

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58. Learned AGP for the Education Officer, has stated that as respondent-employee and the Management has tendered an undertaking before the Education Officer, to the effect that subject to decision of the appeal, which was pending before the learned School Tribunal, the approval be granted to the appointment of respondent-employee, the same was granted by the Education Officer. This fact is clear from approval order of the Education Officer dated 31.12.1999. Therefore, it is the submission of learned AGP as the appeal of Shri. Bhoyar, was allowed by the learned School Tribunal, therefore, the Management has rightly terminated the services of respondent-employee. In this regard, it would be necessary to note that the undertaking tendered by the respondent-employee, it is nowhere stated that he stated that his appointment was made against the post on which Shri. Bhoyar, was appointed.

59. A perusal of the said undertaking clearly states that subject to the decision of the pendency of the appeal, his appointment is made against that post, he will be treated as relieved from services. Therefore, first it has to be demonstrated that the appointment of respondent-employee was made in place of Shri. Bhoyar. However, learned AGP failed to demonstrate that the appointment of respondent-employee

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was made on the post of Shri. Bhoyar. Therefore, the submission of the Education Officer, cannot be accepted in the matter.

60. It would be relevant to refer the judgment of the Coordinate Bench in the case of *Mahatma Phule Krida Prasarak Mandal's case (supra)*, wherein, this Court, has held that merely because a declaration was obtained from the employee that he / she had accepted the appointment against the reserved post, on temporary basis, would not change the intent of the order of the appointment issued to his/her. It is held that the Court has to verify whether the appointment was made on a clear and permanent vacant post or not. If the appointment was made on a clear and vacant post then, such declaration would not come in way of employee, nor such appointment can be treated as a temporary employee. If the employee is satisfied of the other conditions, as contemplated under the provisions of law. The relevant observation of Coordinate Bench, para Nos.7 and 8 reads as under :-

“7. The appointment order which has been issued on 6-6-1995 specifically states that she was being appointed on probation for two years with effect from 12-6-1995. There is no material on record to indicate that the appointment order was issued against a temporary vacancy nor is there anything mentioned in the appointment order that the appointment was being made against a reserved vacancy. Merely because a letter or declaration has been obtained from respondent No. 1 by the petitioners stating that she had accepted her appointment

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against a reserved post, on temporary basis for the academic year 1995-1996, would not in my view, change the intent of the order of appointment issued to her. In the order dated 4-6-1996 appointing respondent No.1 from 10-6-1996 it is mentioned that the appointment is against a reserved post. However, the issuance of this order, in my opinion, is not material as the petitioners had appointed respondent No. 1 as a probationer in 1995 itself. They could not therefore have issued another appointment letter in 1996 appointing her for the academic year 1996-1997.

8. The Tribunal, in my opinion, has appreciated the evidence correctly. It has found that the Education Officer had accorded approval to the appointment of respondent No. 1 on probation for two years by issuing an order dated 30-3-1996. Therefore, in my view, the Tribunal has rightly concluded that the order issued to respondent No.1 was for her or her appointment on probation and not as a temporary employee.”

61. In respect of the petition filed by the respondent-employee, challenging the order of the learned School Tribunal, of denying the backwages, it is clear that the dispute about the appointment was going on in view of the controversy created by the Education Officer and circular dated 22.12.1995. Therefore, considering over all factual as well as legal position in the matter, the learned School Tribunal has rightly considered the issue of the backwages while deciding the appeal in the matter.

62. It is further pertinent to note that there is no document placed on record by respondent-employee stating that he was not gainfully employed during the pendency of the appeal before the

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learned School Tribunal. Therefore, in absence of such an affidavit on record, the learned School Tribunal was right in denying the backwages to respondent-employee. In view of above observations, the following order is passed:-

ORDER

- (i) The Writ Petition Nos.1438 of 2013 and 6609 of 2013 are **dismissed**.
- (ii) The petitioner-Management is directed to reinstate the respondent-employee on the original post of "Assistant Teacher" with continuity in service without backwages, within a period of **30 days**.
- (iii) The petitioner-Management, after reinstatement of respondent-employee shall forward the proposal of approval to the Education Officer within **30 days**.
- (iv) The Education Officer shall decide the proposal in accordance with law, within a period of **45 days**, after the receipt of the same.

Rule is **discharged**. No order as to costs.

(PRAVIN S. PATIL, J.)

63. After the judgment was pronounced, learned counsel for the petitioner in Writ Petition No.1438 of 2013 states that as the interim relief has been operating in this matter till date, the same shall be continued for a further period of four weeks. Learned counsel for the respondent-employee strongly opposed the same.

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64. Considering that an interim relief was operating during the pendency of the present petition, the same shall continue for a period of four weeks from today. It is made clear that after a period of four weeks, the stay will stand vacated automatically.

(PRAVIN S. PATIL, J.)

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