Bombay High Court Hindi Vidya Bhavan, Mrs. C.R. ... vs Presiding Officer, School ... on 28 September, 2007 Equivalent citations: 2008 (1) BomCR 231, (2008) IILLJ 138 Bom Author: D Bhosale Bench: D Bhosale JUDGMENT D.B. Bhosale, J. Page 2652 1. This group of writ petitions takes exception to the judgments and orders dated 30.4.2007 passed by the School Tribunal allowing the appeals filed by respondent No. 3 - employees, in all the petitions, challenging their termination by the petitioners. Though the judgments of the School Tribunal are separate, the facts and the reasons recorded by the Tribunal for allowing the appeals filed under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 ("the Act" for short) are similar. The questions raised in these petitions are also similar and, therefore, they are being disposed of by common judgment. 2. Petitioner No. 1 is a public charitable trust, registered under the provisions of the Bombay Public Trusts Act, 1950 runs a school by the name Hindi Vidya Bhavan, now known as HVB Academy ("the school" for short). Petitioner Nos. 2 and 3 are the Principal and the Secretary of the school respectively. Respondent No. 3-employees were the appellants in the appeals Page 2653 filed before the School Tribunal. Respondent No. 4 is, Mithila Azad Security Force ("Mithila" for short), an agency/contractor, which was engaged to provide certain services to the petitioners. According to the petitioners, respondent No. 3 is an employee of Mithila and was never in the employment of the school. 3. The case set out in the petitions by the petitioners is that they have teaching and non teaching staff for the school approved by respondent No. 2 Education Officer. They engaged additional persons, namely, respondent No. 3-employees on adhoc basis through Mithila. The school was required to employ respondent-employees since various services which were required to be provided to its students could not be met with by the then existing staff employed by it and as sanctioned by the Education Department. Therefore, in order to meet miscellaneous services required from time to time, the petitioners had engaged Mithila to provide additional persons on an adhoc basis. 4. The facts set out in the petition further disclose that the school maintains two muster books one for its permanent employees and another for its temporary employees. Two of the respondents-employees in writ petition No. 1495 of 2007 and 1498 of 2007, namely, Parshuram Gurao and Manohar Pavaskar, were employed by the school as peons on a temporary basis and their names were reflected in the temporary muster roll maintained by the school for the said period. They were also issued appointment letters. Parshuram Gurao and Manohar Pavaskar, according to the petitioners, joined Mithila on 1st October, 1996 and were deputed by Mithila to provide certain services to the petitioners. The other five employees were never on the temporary muster of the petitioners and were at all material time employees of the said Mithila. The bills raised by Mithila in respect of the services provided by its employees to the school were paid from time to time by the school. There is no dispute that all the respondent-employees worked with the school for more than two years between 23.6.1995 and 8.4.2000 as Peons/Ayah. They all, as stated in their appeals, were terminated on 8.4.2000. 5. According to the petitioners, in or about April 1998 the respondent-employees started claiming permanency in

the service with the school. This demand was sought to be conveyed through Mumbai Labour Union, of which they claimed to be the members. In the weeks that followed, the respondent-employees started creating serious unrest by discharging their duties in a most unsatisfactory and perfunctory manner and then from 8th April, 2000 ceased to provide any services to the petitioners. It appears that the respondent-employees had initially filed a complaints before the Labour Court under the provisions of MRTU & PULP Act against the petitioners. The said complaints, however, came to be withdrawn and they all filed appeals under Section 9 of the Act before the School Tribunal. 6. The school had raised a serious objection as to the jurisdiction of the school tribunal to entertain the appeals on the ground that the appeals are not maintainable as there is no "employee and employer" relationship between "the school and the respondent-employees" and that they were the employees of Mithila. In view thereof the tribunal framed an issue of its jurisdiction/maintainability of the appeals and answered the same in Page 2654 affirmative vide its judgment and order dated 2.9.2004. The contention urged by the petitioners that an issue of relationship can be decided only by the Civil Court was rejected. That order was challenged by the petitioners in writ petition No. 259 of 2006. The learned Single Judge by order dated 29.3.2005 allowed the petitioners to withdraw the writ petition with liberty to challenge the order dated 2.9.2004, impugned in the said writ petition, after final decision in the pending appeals before the School Tribunal. The Tribunal, accordingly, proceeded to hear the appeals on merits and allowed all the appeal vide judgments and orders dated 30.4.2007 directing the petitioners to reinstate the respondent-employees to the post of Peon and pay backwages from the funds of the Management. This judgment and the judgment dated 2.9.2004 are being challenged in the present writ petition. The tribunal held that the respondent-employees are the employees of the petitioners and that the order of termination is bad in law. The observations made by the school tribunal in paragraph 8 and 9 of the judgment dated 30.4.2007 reads thus: 8. From the documents available on record it clearly shows that the appellant was appointed as a Peon on daily wages for fixed period. But even after expiry of appointed period his service was continued by management in the school without issuing further appointment order. It is the defence of the Respondent that the appellant was a member of Mithila Azad Security Force and his service obtained in the school on contract basis. But even the MEPS Act came into force for making appointments and regulating service conditions of the employees including teaching and no teaching staff members of private school, the management is under obligation to make appointment of any employee as per the provisions of the Act. The Management is not authorised to give go-by to the provisions and rules framed thereunder to employ any person in the school by adopting any other mode. It cannot avail of the service of appellant on contract basis through agency. The Act does not authorise the management to adopt any other method to appoint any person in its school. The MEPS Act is a beneficial legislature specially enacted in order to give protection and security to the employees of private school. If the case of the respondent is accepted it will amount to give a licence to make appointment

of the employees without following procedure and rules of the law. Therefore the stand taken by respondent is totally unjustifiable and unsustainable. 9. If further reveals that though the appellant was initially appointed on daily wages for specific period but subsequently his service was continued in the school for about 4 years. Though it was obligatory on the part of management to make appointment of appellant as per the provisions of the Act by issuing an appointment order in, prescribed proforma in Schedule D, the management failed to do it. The management committed mistake of employing the appellant on contract basis. Therefore it cannot be allowed to take advantage of its own mistake. Therefore irrespective of the nature of his service he ought Page 2655 to be treated as permanent employee of the school. His service would not have been terminated without due process of law. In such circumstances the termination order dated 12.6.2000 is liable to be set aside. Appellant is entitled to the relief of his reinstatement to the post of peon with all service benefits from the date of termination. 7. I have heard Mr. Rafiq Dada, learned senior counsel for the petitioners, Mr. Kumbhakoni, learned Associate Advocate General as amicus curiae, Mr. Karwande, learned Counsel for the respondent-employees and Mr. M. More, learned A.G.P. for the State at considerable length and with their assistance perused the entire record placed before me so also the judgments relied upon by them in support of their submissions. At this stage I may place a note of appreciation for the assistance rendered by Mr. Kumbhakhoni who readily accepted the request made by the court to appear and assist in these matters. 8. Mr. Rafiq Dada assailed the impugned judgments mainly on the grounds that the respondent-employees were never employees of the school and, therefore, the impugned judgments are clearly devoid of jurisdiction and contrary to law and liable to be quashed and set aside in exercise of the writ jurisdiction of this Court under Article 226 of the Constitution of India. He submitted that the provisions of MEPS Act are similar in material respect to the provisions of MRTU & PULP Act with regard to jurisdiction of the tribunal set up thereunder, as such, the school tribunal has no jurisdiction to decide an issue as to whether the respondent-employees are in fact the employees of the school and it is only Civil Court which can decide an issue of relationship. In support of this contention he placed reliance upon the judgment of the Supreme Court in Cipla Ltd. v. Maharashtra General Kamgar Union (2001) 3 SCC 101 and Sarva Shramik Sangh v. Indian Smelting and Refining Co. Ltd. . He then submitted that it is settled law that a person who has been appointed otherwise than in accordance with the relevant Rules and Regulations as contemplated by the provisions contained in the Act and the Rules framed thereunder for recruitment cannot claim permanency in service. In support of this submission he placed reliance upon the judgment of the Supreme Court in the Secretary, State of Karnataka & Cos. v. Umadevi and Ors. . He submitted that the principles laid down by the Supreme Court in its judgment will apply with as much force to private schools as to public sector corporation or Government bodies. In other words, he submitted that the judgments in this regard lay down generally applicable principles of employment law, education being a heavily regulated sector of commercial activity with a strong public interest element,

the principles enunciated in the said judgments would in any event apply to the recruitment of employees by the schools. 9. Mr. Dada next submitted that there is no prohibition, either under the Act Page 2656 or generally, for a school to enter into a contract for securing services. For example, he submitted that it is entirely conceivable that a school may enter into a contract for repairs of its existing structures or for construction of a building or for electrical or plumbing work or for its canteen without employees of such contractor being deemed to be its own employees. He submitted that the contract labour is not illegal unless it is abolished by a notification issued under Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 (for short "Contract Labour Act"). He further submitted that the school is an industry and it was permissible in law to employ contract labour. He then submitted that the respondent-employees have entirely suppressed the fact that they were on the muster roll of Mithila and, therefore, they had no right to claim to be the employees of the school. 10. Mr. Dada submitted that none of the respondents-employees were on permanent or temporary muster roll of the school. The school tribunal, according to Mr. Dada, could not have arrived at the conclusion that the arrangement between the school and Mithila was not genuine or that the school was in any way seeking to circumvent the provisions of the Act. He submitted that the school has always engaged its entire sanctioned strength of teaching and non teaching staff strictly in accordance with the provisions of the Act and has not sought to substitute such sanctioned staff by any contract labour as sought to be insinuated. 11. He next submitted that in any case the respondent-employees are not entitled for reinstatement since they were temporary or casual employees. In support of this contention he placed reliance upon the judgment of the Supreme Court in Hindustan Education Society v. S.K. Gulam Nabi . He submitted that the tribunal committed grave error of law in issuing directions to pay backwages to the respondent-employees. In absence of any pleadings or proof to show that the respondent-employees had no alternative means of livelihood after the termination of their services. In support of this contention he placed reliance upon the judgment of the Supreme Court in U.P. State Brassware Corporation Ltd. v. Uday Narain Pandey . 12. On the other hand Mr. Kumbakhoni, learned Associate Advocate General, at the outset submitted that it is impermissible for any Management conducting a school to appoint any employee either teaching or non-teaching on contract basis. A concept of appointing either teaching or non-teaching staff on contract basis is not recognised under the provisions of the Act and the rules. The provisions of the Act and the Rules lay down a specific statutory scheme which covers every aspect of the conditions of service of a person employed by the Management conducting a school, as defined by the said Act. Departure from the procedure laid down under the Act and the Rules cannot be allowed by taking recourse to the provisions of General Law. 13. Mr. Kumbhakoni, submitted that the Act being special legislation, after Page 2657 it came into force a matter of contract ceased to lie in the contractual realm, and assume a character of status governed and regulated by the law. The rights of the employees, liability of the Management and the duties of the employees have been statutorily enforced by the provisions of the said

Act and the said rules. The Act and rules covers every aspect of relationship of the employment with the Management of the recognised Private Schools. He invited my attention to the definition of the word "employee" under Sub-section (7) of Section 2 of the Act and to the Rule 10 of the Maharashtra Employees of Private School (Rules) 1981 (for short "the rule") which deals with categories of the employees and submitted that there is no scope whatsoever for a Management conducting a school to appoint any employee on contractual basis, either by entering into contract directly with the employee or obtaining such services by appointing a contractor. 14. Mr. Kumbhakoni submitted that the provisions of the Act or the Rules do not take away jurisdiction of the tribunal to decide the question, if raised, as to whether there exist the relationship between the Management and the appellant as employer and employee. The analogy contemplated by the judgments of the Supreme Court cited by Mr. Dada which was dealing with the provisions of MRTU & PULP Act in respect of such relationship would not apply to the cases arising from the Act wherein the word "employee" is defined to mean member of the teaching and non teaching staff of recognised school. The Management conducting a private school cannot be permitted to defeat the provisions of the Act and the Rules by camouflaging the employment of teaching and non-teaching staff by pleading that the services of such staff have been made available by the contractor with which the Management has allegedly entered into a contract for making such services available. 15. He submitted that the Act is social welfare legislation and, therefore, in view of the judgment of the Supreme Court in Lalappa Lingappa and Ors. v. Laxmi Vishnu Textile Mills Ltd. the courts are required to adopt a beneficial rule of construction while interpreting the provisions of the said Act and the said rules and such construction thereof is required to be preferred which fulfils the policy of the Act and is more beneficial to the persons in whose interest the Act has been passed. Mr. Kumbhakoni also placed reliance upon the judgment of the Full Bench in Ulai High School and Anr. v. Devendraprasad Jagannath Singh 2001(1) Mh.L.J. 597. In support of his contentions that the approval by the Education Officer to valid order of appointment is not precondition and that the appeal is not maintainable before the tribunal at the behest of the employee whose appointment has been approved. Mr. Kumbhakoni, submitted that the only forum contemplated by the Act and the Rules, to decide the question whether particular person is an employee of the private school, is a School Tribunal which can exercise such jurisdiction under Section 9 of the Act. Page 2658 16. Mr. Karwande appearing for the respondent-employees adopted the submissions urged by Mr. Kumbhakoni and in addition thereto invited my attention to various documents to emphasis that for all practical purposes the respondent-employees were working directly under the petitioners as their employees. 17. Before the Act came into force on 15th July, 1981 the plight of the members of the teaching and non teaching staff was precarious and they were helpless sufferers. The services of any member of the staff of a recognised school could be terminated without assigning any reason. Aggrieved employees would approach the civil court since there was no other forum available to redress their grievance. This adverse conditions of the employees forced them

to organise. Due to strong movement of the teachers organisation in the State, that has followed, certain rules and grant-in-aid code were granted to give some monetary relief when they were retrenched or dismissed from the services. This situation ultimately forced the Government to bring legislative changes to give legal protection to the members of staff. Accordingly, the bill was introduced in the legislative council and the Act was passed in March 1978. The Government found it expedient to regulate the recruitment and conditions of service of employees in certain private schools in the State, with a view to providing such employees security and stability of service to enable them to discharge their duties towards pupils and guardians in particular, and the institution, and the society in general, effectively and efficiently. It was also found expedient in the public interest to lay down the duties and functions of such employees with a view to ensuring that they become accountable to the management and contribute their mite for improving the standard of education. 18. It would be advantageous to reproduced the statement of object and reasons accompanying the introduction of the Bill which sheds considerable light on the situation that existed prior to the enactment of the Act and the object and purpose which the Legislature intended to subserve in enacting the law. The Statement of Objects and Reasons read thus: ... The service conditions of employees working in private primary, secondary and higher secondary schools and in Junior Colleges of Education are at present determined by executive orders of the State Government. During the last few years, on account of an abnormal growth in the number of such educational institutions and the consequent increase in the number of employees working in them under various Managements, the incidence of disputes between the Managements and their employees in respect of service conditions and the interpretation of the executive orders specifying them has also increased considerably. The decisions given according to the prevailing executive orders have been challenged in the Court of Law by the aggrieved parties. In some cases, the Courts have set aside the decisions of the Education Department and the officers subordinate to it on the ground that these were given according to the executive orders, which have no force of law. It has, therefore, become necessary to give statutory basis to the executive orders regulating the service conditions of such employees by passing an Act and by taking powers Page 2659 to make the necessary rules for the purpose and to provide for a quasi-judicial machinery in the form of a Tribunal for making justice speedily available to these employees, thus ensuring the security and stability of their service. Having provided for security and stability of service, it is also necessary to lay down the duties, Code of Conduct and disciplinary matters of such employees, so as to render them accountable and to ensure that they contribute their mite towards improving the standard of education. It is well settled that the preamble and the Statement of Objects and Reasons is a key to open mind of the framers of the legislation and it could be taken recourse to while interpreting the Act. 19. At this stage I would like to survey the provisions of the Act and the Rules, as may be relevant, for considering the questions that fall for my consideration. Sub-section (7) of Section 2 of the Act defines “employee” to mean any member of the teaching and non-teaching

staff of a recognised school. Section 3 of the Act states that the provisions of this Act shall apply to all private schools in the State of Maharashtra, whether or not receiving any grant-in-aid from the State Government. Sub-section (1) of Section 4 states that rule making power has been conferred upon the State Government to govern the entire spectrum of service condition consisting of the procedure and qualification for recruitment, duties, pay allowance, conditions of service, reservation and retiral benefits. Sub-section (6) of Section 4 places embargo on the management to suspend, dismiss, remove and from reducing in rank by the management, except in accordance with the provisions of the Act and the Rules made in that behalf. 20. The conditions of services of an employee of private schools are not merely in contractual realm. They are prescribed by the Statute, regulated by the Statute and possesses statutory flavour. Sub-section (1) of Section 5 requires every Management to, fill in, in the manner prescribed, every permanent vacancy in a private school by the appointment of a person duly qualified to fill such vacancy. The appointment of a person to fill permanent vacancy has to be on probation for the period of two years under Sub-section (2). Consistent with the object of the legislature to provide security and stability of services, Sub-section (2) further lays down that subject to the provisions of Sections (3) and (4), an employee shall on completion of probationary period of two years be deemed to have been confirmed. A right is, however, conferred, upon the management under Sub-section (3) to dispense with the service of a probationary officer if the service is not found satisfactory during the period of probation. 21. Section 9 deals with the right of an appeal of employee of private schools and Section 11 deals with powers of the tribunal to give appropriate reliefs and directions. It would be advantageous to reproduce these two provisions to appreciate the submissions advanced on behalf of the petitioners challenging the jurisdiction of the tribunal to pass the impugned judgments. The relevant part of Section 9 and 11 read thus: 9. (1) Notwithstanding anything contained in any law or contract for the time being in force any employee in a private school. Page 2660 (a) who is dismissed or removed or whose services are otherwise terminated or (b) and who is aggrieved, shall have a right of appeal and may appeal against any such order or suppression to the Tribunal constituted under Section 8. (2) Such appeal shall be made by the employee to the Tribunal, within thirty days from the date of receipt by him of the order of dismissal, removal, otherwise termination of service or reduction in rank, as the case may be; Provided that where such order was made before the appointed date, such appeal may be made within sixty days from the said date" 11.(1) (2) Where the Tribunal, after giving reasonable opportunity to both parties of being heard, decides in any appeal that the order of dismissal, removal otherwise termination of service or reduction in rank was in contravention of any law (including any rules made under this Act), contract or conditions of service for the time being in force or was otherwise illegal or improper, the Tribunal may set aside the order of Management, partially or wholly, and direct the Management,: (a) to reinstate the employee on the same post or on a lower post as it may specify; (c) to give arrears of emoluments to the employee for such period as it may specify; (f) to give such other relief to the employee

and to observe such other conditions as it may specify, having regard to the circumstances of the case. (4) Any direction issued by by the Tribunal under Sub-section (2) shall be communicated to both parties in writing and shall be complied by the Management within the period specified in the direction, which shall not be less than thirty days from the date of its receipt by the management. 22. Upon perusal of Sub-section (2) of Section 11 it is clear that the tribunal is empowered to set aside an order of Management partially or wholly where it finds that the order of dismissal, removal or otherwise termination of service or reduction in rank is in contravention of any law including rules made under this Act. Thus, the right of appeal is full and complete and untramelled by procedural or substantive limitations. Section 12 provided that the decision of the tribunal to be final and binding on the employee and the Management, and no suit, appeal or other legal proceedings shall lie in any Court, or before any other Tribunal or authority in respect of the matters decided by the tribunal. Page 2661 23. Rule 9 of the Rules lays down the procedure for appointment of the teaching and non-teaching staff. Upon perusal of rule 9 it is clear that the school shall have adequate staff having regard to the number of classes in the school and the pupils. Rule 10 states categories of the employees. Under Sub-rule (1) the employees shall be permanent or non permanent. Non-permanent employees may be either temporary or on probation. Sub-rule (2) states that a temporary employee is one who is appointed to a temporary vacancy for a fixed period. Though under Rule 10 categories of the employees are not named, schedule (c) of the Rules and part VIII thereof provides scales of pay for non teaching staff in schools. Clause (v) of category 4 provides pay scale 750-940 for Peon/Watchman or Night Watchman or Chowkidar/Sweeper/Call Women/Kamathi /Attendant/Laboratory Hamal or Hamal or any other members of the lower grade staff. 24. The full bench of this Court in St. Ulai High St. Ulai High St. Ulai High School's case (supra) had an occasion to deal with and analyse the provisions of the Act. It has, after analysis, carved out the broad propositions which clearly demonstrate the object and the purpose of the Act and the statutory scheme. The relevant propositions read thus: 6.4. An analysis of the provisions of the Act would sustain certain basic principles which find legislative recognition in the statutory provisions enacted by the State Legislature. The object and purposes of the Act and the statutory scheme are clearly demonstrative of the following propositions: (i) The avowed object of the Legislature in enacting the law was to provide security and stability of service to employees of recognised private schools and to regulate conditions of service by conferring a statutory basis upon the Rules that would be framed under the Act. The regulatory power conferred upon the State Government to frame rules incoporates in its broad sweep every aspect of the relationship of employment with the management of a recognised private school. The procudure and mode of making appointments, qualifications, seniority, promotion, reservations, pay and allowances, disciplinary jurisdiction and post retirement benefits all form the subject-matter of a statutory regulation either under the Act or the Rules framed thereunder. A comprehensive piece of delegated legislation has been made by the State Government in the form of the Maharashtra Employees of

Private Schools (Conditions of Service) Rules, 1981; (ii) The constitution of a Tribunal to entertain and decide certain specific disputes between managements and employees of recognised private schools is with the object of making justice speedily available to employees. A right of appeal is provided to an employee of a private school to the Tribunal constituted under the Act, where the actions complained of are (i) dismissal; (ii) removal; (iii) termination of service; or where an employee is reduced in rank or is superseded by the management while making an appointment to any post on promotion; Page 2662 (iii) The Legislature has constituted the Tribunal as an Appellate Tribunal over decisions of the managments in respect of actions falling within the purview of clauses (a) and (b) of Sub-section (1) of Section 9. The first round of litigation which would take place in the Trial Court is sought to be eliminated by conferring full appellate powers upon the Tribunal. Under Sub-section (1) of Section 10, the Tribunal is vested with all powers of an Appellate Court under the Code of Civil Procedure, 1908. The Tribunal is vested with the complete freedom to decide upon its procedure for the disposal of its business including the places at which and the hours during which the Tribunal will conduct hearing. Under Sub-section (3) of Section 10, an appeal has to be decided as expeditiously as possible, an endeavour being required to dispose of the appeal within three months of the receipt of the appeal. The provision that requires the Tribunal to record reasons for not being able to dispose of an appeal within a period of three months emphasises the weight ascribed by the Legislature to the expeditious disposal of appeals. Section 14 of the Act which excludes legal practitioners from appearing before the Tribunal save and except with the special permission of he Tribunal aims at reducing the period for the disposal of an appeal which is entertained by the Tribunal; (iv) By virtue of the provisions of Sub-section (2) of Section 11, the Tribunal is empowered to set aside the order of the management partially or wholly where it finds that an order of dismissal, removal, "otherwise termination" or reduction is in contravention of any law including Rules made under the Act, contract, conditions or service or if it is otherwise illegal or improper. The right of appeal is full and complete, untramelled by procedural or substantive limitations. 25. The Full Bench in St.Ulai High School's case (supra) has answered several issues including the issues as to whether it is mandatory for every private recognised school to obtain the approval of the Education Department of the State for the appointment of every employee including a teacher employed at such school. It also considered that does the school tribunal under Section 9 of the Act have jurisdiction to adjudicate upon a dispute falling within the purview of that provision on such dispute being raised by an employee whose appointment is not approved by the Education Department of the State and whether an appeal under Section 9 of the Act by an employee whose appointment has not been approved by the Education Department of the State is maintainable. All these questions were answered by the Full Bench holding that neither the Act nor the Rules framed thereunder mandate the grant of approval by the Education Officer is a condition precedent to a valid order of appointment. The requirement of approval which relates to the disbursal of grant-in-aid is a matter between the Management and the State and want of approval will not invalidate an order

of appointment. It has further held that the judgments of the Division Bench of this Court in Anna Manikrao Pethe v. Presiding Officer, School Tribunal Page 2663 1997(3) Mh.L.J. 697 and Shailaja Ashokrao Walse v. State of Maharashtra to the extent that they hold that an appeal is not maintainable before the tribunal at the behest of the employee whose appointment has not been approved did not reflect the correct position in law and is overruled. The Full Bench also considered an issue as to whether the jurisdiction of the Civil Court under Section 9 of the Code of Civil Procedure to entertain a suit on an issue that can be adjudicated by the tribunal under Section 9 of the Act is impliedly barred. The Full Bench answered this issue holding that the Legislature having provided for a remedy before the tribunal only in respect of subjects spelt out in Clauses (a) and (b) of Sub-section 1 of Section 9, in those cases the jurisdiction of the Civil Court is impliedly barred. The jurisdiction of the Civil Court is barred to the extent to which the Legislature has spoken. In other areas which are not covered by clauses (a) and (b) of Sub-section (1) of Section 9, the remedy of appeal before the Tribunal is not available and hence the jurisdiction of the Civil Court is not barred. The contentions urged on behalf of the petitioners, in these petitions, that the respondent-employees cannot be treated as an employees of the school since their appointments were not approved by the Education Department and hence they cannot seek any relief by filing the appeal under Section 9 of the Act and the only remedy open to them was to file a suit in civil court has no merit and must be rejected. 26. Admittedly, all the respondent-employees have rendered services for more than two years. As stated earlier they were engaged since there were various services required to be provided to the students and which could not be met with the personnel employed and sanctioned/approved by the Education Department. For such services the school had to engage the respondents-employees and they provided services to the said school akin to those of a Peon for the period ranging from 2 to 5 years. It appears that all the respondent-employees rendered services without interruption and continuously for more than two years. They were rendering the services of perennial nature for which there was no approved staff available in the school. The school appear to have had engaged the respondent-employees through Mithila since the posts on which they were working were not sanctioned/approved by the Education Department. The school is required to have adequate staff, whether approved or not, having regard to the number of classes and the pupils. The schools cannot be heard to state that they would appoint members of the staff only if it is approved even if they require more persons having regard to the number of classes and the pupils. The requirement of approval relates only to disbursal of grant-in-aid. For want of approval an appointment of the "member of the staff" would not render invalid. Similarly an institution cannot claim that services of non approved member/s of the staff is either temporary or on contract basis and is not covered or protected under the provisions of the Act and continue such member/s of the staff for years without giving him/them benefit of permanency under the provisions of of the Act. If they are allowed to do so, no member of the staff whose appointment has not been approved by the education department would ever be able to claim perma-

nency and other Page 2664 benefits under the Act and the rules. It may also be noticed, as stated in the beginning, two of the respondent-employees were appointed by the school on temporary basis and almost after two years they had, for no reason, allegedly resigned and joined Mithila and then again joined the school as the employees of Mithila. Their appointment and the appointment of other respondent-employees through Mithila, according to the petitioners, was made on the posts which were not approved by the education department. At this stage it may be noted that no educational qualification for the posts, on which the respondent-employees were appointed, is prescribed under the Act or the Rules. And, therefore, the precondition of the qualification in the present case was not an issue for conferring a status of permanent employees on the respondent-employees. I find support for the view in the decision of Full Bench in St. Ulai case (supra), wherein it has observed that approval by the Education Officer cannot be a condition precedent to a valid order of appointment. I have no hesitation in holding that there were permanent vacancies in the school on which the respondent-employees were working although those posts were not approved/sanctioned by the education department. 27. The petitioners claim that the respondent-employees, were not members of their staff and that they were the employees of Mithila. The petitioners also have relied upon the documents produced on record to contend that the respondent-emplyees were not employed by the school. However, the fact remains that they were working continuously in the school for more than two years and were rendering services to the pupils of the school which were required to be provided under the provisions of the Act, the rules and the Secondary School Code. Their services were required since the approved/sanctioned staff was not adequate. 28. There could be an employee, either permanent or non permanent. Non permanent employee may be either temporary or on probation. The temporary employee is one who is appointed to a temporary vacancy for a fixed period. In the present case, it is not a case of the petitioners that the respondent employees were engaged for a fixed period. Two of the petitioners were appointed as temporary for two years since before they were shown as the employees of Mithila. They all worked for atleast two years and when they started claiming permanency they allegedly ceased to render services to the school. Sub-section (2) of Section 5 of the Act clearly provides that every "person" appointed on a permanent vacancy shall be on probation for a period of two years and he shall on completion of the probation period be deemed to have been confirmed. If a person, duly qualified, is appointed by the Management as a member of the staff and if it is not disputed that such person has worked for two years, on a permanent vacancy, he is deemed to have been confirmed as provided for under Section 5 (2) and consequently entitled for all the benefits of permanent staff even if his appointment is not approved and formal order of appointment was not issued. Non approval of such post would not be an embargo either on the management to make him permanent or on such person to claim permanency. In the present case it is not in dispute that all the respondent-employees worked for more than two years and the posts Page 2665 on which they were appointed and working, no specific qualification is prescribed. 29. Let me now consider the contention that in the school, a school

being an industry, there is no prohibition either under the Act or the Rules, for a school to enter into a contract for securing services. The Contract Labour Act was enacted and brought into force on 5th September, 1970 to regulate the employment of contract labour in certain establishments and to provide for its abolition in certain circumstances and for matters connected therewith. This Act is an important piece of social legislation and it seeks to regulate employment of contract labour. It is a legislation for the welfare of labourers whose conditions of service are not at all satisfactory. It was enacted with a view to abolishing wherever possible or practicable, the employment of contract labour. The Act is aimed at abolition of contract labour in respect of such categories as may be notified. It would be advantageous to reproduce Section (1) of Contract Labour Act to appreciate the submissions advanced on behalf of the petitioners. ... (4) It applies: (a) to every establishment in which twenty or more workmen are employed or were employed on any day of the preceding twelve month as contract labour; (b) to every contractor who employs or who employed on any day of the preceding twelve months twenty or more workman: Provided that the appropriate Government may, after giving not less than two months notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this Act to any establishment or contractor employing such number of workmen less than twenty as may be specified in the notifications. (5) (a) ... (b) If a question arises whether work performed in an establishment is of an intermittent or casual nature, the appropriate Government shall decide that question after consultation with the Central Board or, as the case may be, a State Board, and its decision shall be final. 30. Upon mere perusal of Section 1 of the Contract Labour Act it is clear that it applies to every establishment in which 20 or more workmen are employed or were employed on any day of the preceding 12 months as contract labour and every contractor who employs or who employed on any day of the preceding 12 months 20 or more workmen. It further provides that the appropriate Government may, after giving not less than two months notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this Act to any establishment or contractor employing such number of workmen less than 20 as may be specified in the notification. In my opinion, the provisions in this Act are not at all attracted insofar as the petitioner-school is concerned inasmuch as neither it is a case of the petitioners that 20 or more workmen were employed by them on contract basis or there was a notification issued by the appropriate Government applying the provisions of this Act to the school since the number of workmen were less than 20. It is also relevant to notice that neither the school was Page 2666 registered as contemplated by Section 7 nor the contractor had obtained a valid licence under Section 12 of the Contract Labour Act. Section 9 puts a bar on the principal employer from employing contract labour in the absence of a registration under Section 7. In any case if the work for which contract labour is employed is incidental to and closely connected with the main activity of the industry and is of a perennial and permanent nature, it is well settled, the abolition of contract labour would be justified. Taking over all view of the matter, in my opinion, merely because, there is no notification issued under Section 10, does not necessarily mean that

the petitioner-school could have validly engaged Mithila and through Mithila service of the respondent-employees. As noticed earlier that the recruitment and conditions of the service of the employees in private schools are governed by the Act and the Rules and they must be adhere to while appointing members of the staff. The management cannot take advantage of its own wrong to contend that no procedure was followed or an appointment letter was issued and on that ground terminate a member of the staff, who was appointed on permanent post and was holding the required qualification. 31. The word "employee" includes any member of the teaching and non teaching staff of a recognised school. Their appointment is governed by the provisions of the Act and the Rules and more particularly the provisions contained in Section 4 and 5 thereof. Every employee of a private school is governed by the provisions contained in this Act and their appointments is required to be made as provided for under Section 5. Every management is required to fill in every permanent vacancy in a private school by an appointment of a person duly qualified. The appointment of such person has to be on probation for a period of two years as provided for under Sub-section (2) of Section 5 consistent with the object of the legislature to provide security and stability of service. Subject to the provisions laid down in Sub-section (3) and (4) of Section 5 such employee shall on completion of his probationary period of two years be deemed to have been confirmed. The departure from the procedure and the appointment of a person duly qualified, will not preclude such person from claiming permanency. In the present case once having held that the work which respondent-employees were doing was incidental to and closely connected with the main activity of the school and was of permanent nature the petitioners ought to have made their appointment in accordance with the provisions of the Act and the Rules. There cannot be any dispute that the respondent-employees were holding required qualification inasmuch as no specific qualification is prescribed for the posts of a Peon and Ayah. The respondent-employees were working on these posts for more than two years. In my opinion, the tribunal has rightly held in paragraphs 8 and 9 of the impugned judgment dated 30.4.2007, as quoted above, that the respondent-employees are entitled for the protection provided under the provisions of the Act and the Rules. Every employee, who holds required qualification, appointed in a school on a permanent vacancy and if he has worked on such post for a period of two years such employee can claim permanency under the provisions of the Act and the Rules. Approval of the Education Department for an appointment of any member of the teaching or non teaching staff of a private school, in my opinion, is of no consequence. Appointment of every Page 2667 member of the staff is governed and subject to the provisions of the Act and the Rules and the Management which does not adhere to the provisions cannot be allowed to contend that a particular employee is not a member of the staff as contemplated under Sub-section (7) of Section 2 of the Act. The Management cannot be encouraged by allowing them to take defence, as in the present case, that they are the employees of the contractor. If Managements are allowed to engage services of the teaching or the non-teaching staff on contract basis apart from the fact that it would cause insecurity and instability of service the education

would loose its sanctity. The Management conducting a private school cannot be permitted to defeat the provisions of the Act and the Rules by camouflaging the employment of teaching and non teaching staff by pleading that the services of such staff members have been made available to the management by a contractor. Entertaining any such plea of the Management will frustrate the very purpose and object with which the Act and the Rules have been enacted. Taking in view the provisions of the Act and the Rules so also the preamble and the intendment of the Legislature, the contract labour cannot be allowed to enter the field of education. The benefits available under the Special Act cannot be allowed to be defeated in this manner. 32. Mr. Rafiq Dada, learned senior counsel for the petitioners submitted that the school tribunal had no jurisdiction to decide the question as to whether the respondent-employees were in fact the employees of the school and it is only the Civil Court which can decide the question of relationship as employer and employee. He placed heavy reliance upon the judgments of the Supreme Court in support of this contention in the case of Cipla Ltd. (supra) and Sarva Shramik Sangh (supra) wherein the Supreme Court was dealing with a case under the provisions of MRTU & PULP Act. In that case the Supreme Court observed that if the employees are working under a contract covered by the Contract Labour Act then it is clear that the Labour court cannot have jurisdiction to deal with the matter as it falls within the provisions of the appropriate Government to abolish the same. In the present case the facts are altogether different and the so called contract cannot be stated to be covered by the Contact Labour Act. That apart, it cannot be overlooked that the provisions of MRTU & PULP Act provide for the recognition of trade unions for facilitating collective bargaining for certain undertakings, to state their rights and obligations; to confer certain powers on unrecognised unions; to provide for declaring certain strikes and lock-outs as illegal strikes and lock-outs; to define and provide for the prevention of certain unfair labour practices; to constitute courts (as independent machinery) for carrying out the purposes of according recognition to trade unions for enforcing the provisions relating to unfair practices; and to provide for matters connected with the purposes aforesaid. In my opinion, taking in view the provisions of the Act and the judgment of the Full Bench in St. Ulai High School (supra) the judgment of the Supreme Court in Cipla Ltd (supra) would not apply to the facts of this case. Page 2668 33. The Act regulates the recruitment and conditions of the services of the employees in private schools in the State and it was enacted with a view to provide such employees with security and stability of service to enable them to discharge their duties towards pupils and guardians in particular and the institution and society in general effectively and efficiently. The provisions of the Act confer substantive rights on the employees to seek protection of their services. The principles laid down by the Supreme Court in dealing with the provisions of the MRTU & PULP Act are of no avail to the petitioners, in the present case, under the Act and the Rules. I do not see any reason as to why the tribunal cannot decide the issue of jurisdiction, if raised, by the employer, as in the present case. There is no prohibition in dealing with the issue of relationship between the employer and employee by the school tri-

bunal. The school tribunal once having convinced that a person filing an appeal under Section 9(1) of the Act, duly qualified to be appointed on the vacancy, whether teaching or non-teaching, had worked in the school as its employee for more than two years on a permanent vacancy it can deal with all the questions, objections and issues raised by the employer in the appeal and there is no need to relegate the parties to any other forum to decide such questions or issues. 34. In Umadevi's case (supra) the Supreme Court was dealing with a case of the workers who were temporarily engaged on daily wages in the Commercial Taxes Department in some of the districts of the State of Karnataka. The Supreme Court in that judgment began with the following observation that: "Public employment in a sovereign socialist secular democratic republic, has to be as set down by the Constitution and the laws made thereunder. Our constitutional scheme envisages employment by the Government and its instrumentalities on the basis of a procedure established in that behalf." The Supreme Court has further observed that "any public employment has to be in terms of the constitutional scheme." In my opinion, looking at the context in which the Supreme Court has observed that a person who has been appointed otherwise than in accordance with the relevant Rules and Regulations cannot claim permanency in service, that judgment is of no avail to the petitioners. The Act, with which we are concerned in these petitions, was enacted by the State Legislature to regulate the recruitment and conditions of service in certain "Private Schools". The provisions such as the deeming provision in Section 5(2) cannot be overlooked, which confers unfeterred right on an employee to claim permanency having fulfilled all the conditions contemplated by the Act and the Rules. Appointment of a person in a school otherwise then in accordance with the procedure envisaged in the Act and the Rule would at the most give a ground for the education department not to sanction such appointment and release the grant-in-aid. The appointment of such an employee would not render invalid, if he is otherwise qualified and holds it for two or more years. Page 2669 35. If the scheme under Section 4, 5, 9 and 11 of the Act in particular are put together and kept in view, it clearly follows that the entire procedure including conditions of service in a private school has been provided for by this Special Legislation and there is no need to fall back upon the general principles laid down by the judgments of the Supreme Court and High Courts while dealing with cases under the other Acts more particularly when the provisions of the special Act are plain, clear and require no aid for its interpretation from outside. The provisions/scheme of the Act is clear and needs no aid from outside. When the Legislature provides a special statute, as the present, to cover a given situation, there is an obligation on the institution while employing members of the staff to follow the procedure and then obtain the protection which the law intends to confer. The petitioners who had failed to follow the procedure for appointing the respondent-employees cannot obtain protection under the Act and refuse to make them permanent. Similarly, if the proposition canvassed by the petitioners that the tribunal could not have decided the issue of relationship between the appellant and the institution, as employer and employee, in the appeal under Section 9 of the Act, no appeal would proceed on merits before the tribunal. The institutions would

frustrate the remedy of appeal by taking such a defence/stand in every matter. 36. The submission that, in any case, the respondent-employees are not entitled for reinstatement since they were temporary or casual employees, based on the judgment of the Supreme Court in Hindustan Education Society (supra) also deserves to be rejected outright for more than one reason. Firstly, looking at the nature of work they were doing for more than two years and that they were qualified to work, their appointment cannot be treated as either temporary or casual. Secondly, until all the respondent-employees were terminated on the very same day they worked for more than two years. The manner in which they were appointed and then terminated it cannot be said that their appointment was temporary and they deemed to have been made permanent on expiry of the period of two years. 37. Looking at the sequence of events right from the day of termination and that the vacancies on which the respondent-employees were working, had not been approved by the education department and that the school is not entitle for grant for the payment of their wages, in my opinion, it would be just and proper to grant 50% of the back wages instead of granting full back wages from the date of termination. Hence that part of the impugned order is modified and the petitioners are directed to pay 50% of the back wages from the date of filing of the appeals before the Tribunal. The writ petitions, accordingly, stand partly allowed. In the result rule in all the petitions stand disposed of in terms of this judgments.