Bombay High Court St. Ulai High School Through Its ... vs Shri Devendraprasad Jagannath ... on 18 December, 2006 Equivalent citations: 2007 (109) Bom L R 60, 2007 (1) MhLj 597 Author: D Chandrachud Bench: J Patel, D Chandrachud, R Dalvi JUDGMENT D.Y. Chandrachud, J. Page 0067 1. The Reference to the Full Bench: 1.1 This reference before the Full Bench raises principally, the issue as to whether a suit is maintainable in a Civil Court in respect of matters set out Page 0068 in Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and Rule 12 of the Rules framed thereunder. 1.2 The First Respondent was employed by the Appellants as an Assistant Teacher on 2nd July 1993 on a temporary basis and his appointment was renewed for terms of 11 months until 30th April 1997. On 18th March 1997, the services of the First Respondent were dispensed with. The First Respondent instituted a suit in the Court of the Civil Judge, Junior Division, Thane, seeking a declaration that the communication dated 18th March 1997 is illegal and void; a decree and order to the effect that he is a permanent employee of the educational institution, entitled to the benefits available under the Act and the Rules framed thereunder. The suit was decreed by the Trial Court on 30th August 1999. An appeal preferred by the management was dismissed by the Additional District Judge at Thane on 6th April 2001. Both the Trial Judge and the Appellate Court rejected the challenge by the management to the jurisdiction of the Civil Court and held that while the School Tribunal has been constituted under the Act, there is no express bar ousting the jurisdiction of the Civil Court and consequently, both the Civil Court as well as the School Tribunal would have the jurisdiction in a matter relating to the termination of the services of an Assistant Teacher. When the Second Appeal came up before a Learned Single Judge, the Court noted the judgments of this Court in Janata Janardhan Shikshan Sanstha v. Vasant P. Satpute 1986 Mh. L.J. 260 and Rasta Peth Education Society v. Petkar Udhao Bhimashankar 1994 Mh. L.J. 725 which took the view that the jurisdiction of the Civil Court to entertain a suit in respect of matters covered by Section 9 of the Act was not ousted. The Learned Single Judge noted that in a subsequent decision in Satyawadi Ganpatrao Pimple v. Aruna Ganpatrao Narvade 2000(2) Mh. L.J. 322 another Learned Single Judge has taken the view that the jurisdiction of the Civil Court was impliedly barred by virtue of the provisions of Section 9 of the Act. Noting the divergence of views in judgments of Learned Single Judges of this Court, the Second Appeal was directed to be placed before a Division Bench for resolution of the following substantial question of law: That the civil suit under Section 9 of the Code of Civil Procedure, 1908 in respect of matters set out in Section 9 of the MEPS Act and Rule 12 thereof are impliedly barred. The reference was accordingly placed before the Division Bench. By an order dated 13th April 2004, the Division Bench observed that in order to answer the issue that is referred, it has become necessary to consider several judgments of Division Benches of this Court dealing with: (i) The necessity to seek approval of the Education Officer to the appointment of employees; (ii) The jurisdiction of the School Tribunal to entertain an appeal by an employee whose appointment is not approved; and (iii) The jurisdiction of the Tribunal to reopen a decision

of the Education Officer on the question of seniority. The Division Bench found itself unable to agree with the view taken by two earlier Division Benches on the question of the necessity for approval of an Page 0069 appointment either as a condition to the validity of the appointment or for conferring jurisdiction on the Tribunal. The Division Bench noted that the view taken by Division Benches on the subject was not consistent which in turn, would require a reference to the Full Bench. By the directions of the Hon'ble the Chief Justice, the reference has been placed before us for consideration. 2. ISSUES BEFORE THE COURT: 2.1 For convenience of exposition, it would be appropriate at the outset to define the issues that arise for the consideration of the Court. Submissions before the Court have proceeded along these lines. The issues are as follows: -(1) Is the jurisdiction of the Civil Court under Section 9 of the Code of Civil Procedure, 1908, to entertain a suit on an issue that can be adjudicated by the Tribunal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 impliedly barred? -(2) Can an employee of a recognised private school institute a suit in a Civil Court seeking a decree for reinstatement in service? -(3) Does the Civil Court under Section 9 of the Code of Civil Procedure, 1908, and/or the School Tribunal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, have jurisdiction to adjudicate upon the correctness of an order passed by the Education Officer under Rule 12 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981? -(4) Can a decision of the Education Officer on the placement of a teacher in the Seniority List be challenged before the Tribunal in an appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977? -(5) Is it mandatory for every private recognised school to obtain the approval of the Education Department of the State to the appointment of every employee including a teacher employed at such school? -(6) 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? -(7) Is an appeal under Section 9 of the Act by an employee whose appointment has not been approved by the Education Department of the State maintainable? 2.2 Broadly speaking these issues fall into three heads. Issues (1) and (2) deal with the question as to whether a suit can be maintained before the Civil Court in respect of those subjects on which an appeal has been provided to the Tribunal by Section 9 of the Act. Issues (3) and (4) explore whether a decision taken by the Education Officer on a question of seniority under Rule 12 can be challenged in an appeal under Section 9 of the Act before the Tribunal and whether a suit in a Civil Court could be maintainable to impugn Page 0070 the decision of the Education Officer. The third head of issues consisting of Issues (5), (6) and (7) investigates into the question as to whether an appeal before the Tribunal can be maintainable where the appointment of an employee has not been approved by the Education Department of the State. The Court under the third head has to explore the nature and basis of the requirement of obtaining approval and the interrelationship, if any, between the want of approval and the maintainability

of an appeal before the Tribunal. 3. Conflict of decisions in this Court: 3.1 The three heads under which the issues have been distributed form the subject matter of the reference to the Full Bench. Conflicting views have been expressed in judgments of Learned Single Judges and, as we shall see, in decisions of Division Benches as well. In order to appreciate the context of the controversy, it is necessary to advert to the conflicting views that have been expressed on all the three aspects, namely, (i) The maintainability of a civil suit on a subject which falls within the jurisdiction of the Tribunal under Section 9; (ii) The nature of the remedy available against the decision of an Education Officer under Rule 12; and (iii) The requirement of approval by the Department and its interrelationship with the maintainability of an appeal before the Tribunal. The conflict of decisions can now be analysed: -(A) Maintainability of a suit before the Civil Court on a subject falling within the purview of Section 9 of the MEPS Act, 1977. (i) In Janata Janardhan Shikshan Sanstha v. Dr. Vasant Satpute (supra), a declaratory suit by a Headmaster of a recognised private school seeking relief on the ground that the resignation from service was not voluntary, but was obtained by force, was held to be maintainable. A Learned Single Judge of this Court held that an employee who was wrongfully dismissed from service had a remedy by way of a civil suit under the general law and there was nothing in Section 9 of the MEPS Act, 1977 which took away that right either expressly or by necessary implication. The Court held that Section 9 confers an additional remedy by way of an appeal to the Tribunal and if an employee resorted to such a remedy, the decision of the Tribunal in appeal would be final and could not be challenged in a suit or other civil proceedings. The Court observed as follows: The language of Section 9 of the said Act does not, however, anywhere provide that such a remedy was intended to be an exclusive remedy. As far as Section 12 of the said Act is concerned, it is clear that the bar of jurisdiction of a civil court is only in respect of a decision given by the Tribunal in a matter covered by Section 9. There is nothing in the language of Section 9 or 12 to bar the jurisdiction of a civil court in a case where an employee has instituted proceedings therein and asked for a declaration that termination of his services is null and void as being contrary to the provisions of Rule 28 of the said Rules. The Learned Single Judge held that under the general law, the only remedy that is available for the wrongful termination of a contract of personal service is to sue for damages. However, when Page 0071 a dismissal is unlawful because of a statutory limitation placed on the employer, the Civil Court is entitled to grant relief of restitution by declaring that the order of dismissal is null and void and that the employee continues in service. -(ii) In Rasta Peth Education Society v. Petkar Udhao Bhimashankar (supra), a Learned Single Judge again held that the remedy available under the Act will not operate as a bar to the jurisdiction of the Civil Court. Such remedy under the special statute will be deemed to be concurrent leaving it open to the aggrieved person to choose one of them“. The Learned Single Judge considered the provisions of Section 12 under which the decision of the Tribunal on an appeal entertained and disposed of shall be final and binding on the management and the employee and no suit, appeal or other legal proceedings would lie in respect of matters decided by the Tribunal. The

Learned Single Judge held that where the matter was decided by the Tribunal, the suit was barred, but this did not foreclose the institution of a suit before the Civil Court instead of moving the Tribunal: It is clear from a reading of the above section that what is barred under this section is suit, appeal or other legal proceeding in any court or Tribunal"in respect of the matters decided by the Tribunal". This section does not prohibit suit or other proceedings in any civil court in any matter for which appeal has been provided in this Act. There is nothing in the scheme of the Act to justify inference of implied exclusion of the jurisdiction of the civil court. In such a situation, as observed by the Supreme Court, it is open to the suitor to select one of the two forums - appeal under the Act or a civil suit. If he opts for civil suit, the remedy available under the Act by way of appeal will not operate as a bar. (iii) The earlier judgment in Rasta Peth was considered by another Learned Single Judge in Satyavadi Ganpatrao Pimple v. Aruna Ganpatrao Narwade (supra). In view of the law laid down by the Supreme Court, the Learned Single Judge held that where under a special statute, there is no specific bar to the jurisdiction of the Civil Court, it was necessary to examine whether the jurisdiction is impliedly barred. If the special statute provides for measures to deal with rights and grievances effectively and gives finality to such orders, the jurisdiction of the Civil Court would be impliedly barred. The Learned Single Judge held thus: A detailed examination of the scheme of the M.E.P.S. Act and the Rules framed thereunder, ... would indicate that sufficient provisions have been made to deal with the grievances relating Page 0072 to the service matters of the employees in the private schools whether aided or unaided and the remedy so provided is, undoubtedly efficacious as well as complete. -(B) Maintainability of an appeal before the Tribunal under Section 9 to impugn an order of the Education Officer: (i) In Burondi Lodghar v. Vilasrao M. Desai a Learned Single Judge held that a conjoint reading of Rule 12 of the MEPS Rules, 1981 and Section 9 of the MEPS Act, 1977 would show that different powers are conferred upon different authorities. The Learned Single Judge held that the Tribunal cannot adjudicate upon questions of inter se seniority between teachers; that power is conferred specifically upon the Education Officer under Rule 12 of the MEPS Rules, 1981. (ii) In Umesh Balkrishna Vispute v. State of Maharashtra 2001 (2) Bom. C.R. 145 a Division Bench of this Court held that the judgment of the Learned Single Judge in Lodghar (supra) was not good law. The Division Bench noted that the issue was not res integra, having already been decided upon in two unreported judgments of Division Benches at the Nagpur Bench in Saroj Yashwant Deopujari v. Education Officer (W.P. 546 of 1989 decided on 31st March 1989) and Ramchandra Narayan Jamkar v. Saroj Yashwant Deopujari (W.P. 1309 of 1991 decided on 19th June 1991). The view of the earlier judgments of the Division Bench was that Section 9 is prefaced by an overriding nonobstante provision. Hence under Section 9, the Tribunal has jurisdiction to adjudicate upon the validity of an order of supersession passed by the management while making an appointment to a post by promotion. Where for a final decision on the validity of an order of supersession an adjudication as to the validity of the Seniority List is inevitable, it can be decided as an incidental issue. The Education Officer

was neither a Court nor was his determination final under Rule 12. While following the earlier Division Bench decisions, the Division Bench held as follows in Vispute (supra): Finalisation of the seniority list in terms of Rule 12 of the Rules is not final and conclusive and not binding on the tribunal and Section 9(1) of the Act has overriding effect as it opens with non-obstante clause and the dispute relating to the seniority list can also be considered by the Tribunal as an incidental question while deciding the controversy in regard to the supersession. The dispute relating to supersession in the matter of promotion squarely lies within the jurisdiction of the Tribunal. (iii) In Mrs. Saramma Varghese v. The Secretary/President, S.I.C.E.S. Society a Division Bench of this Court while Page 0073 considering the guidelines laid down in Schedule F to the Rules for the determination of seniority held that once a teacher had the requisite qualification of being a graduate with a B.Ed. Degree, such a teacher would rank in seniority according to the date of continuous officiation. On the question as to whether a decision of the Education Officer of the Zilla Parishad under Rule 12 could be challenged in writ proceedings under Article 227 of the Constitution, the Division Bench held that the Education Officer is a quasi judicial authority to whom the function of deciding disputes in regard to seniority has been conferred. Though he may not have the trappings of a Court, the Court held that the Education Officer performed a quasi judicial function and he was, therefore, a Tribunal within the meaning of Article 227 of the Constitution subject to the supervisory jurisdiction of this Court. (iv) In Atmaram Raghunath Pashte v. The Chairman AlyaniGegaonNandval, Ashnoli Shikshan Sanstha 2004(1) ALL MR 90 an order passed by the Education Officer of the Zilla Parishad on the question of seniority between two teachers was questioned before the Division Bench in a petition under Article 226 of the Constitution. The Court rejected a preliminary objection that was taken to the maintainability of the Petition holding that the order that was impugned was not passed by the management of the Institution, but by the Education Officer. The Court held that if the management were to pass a consequential action, a teacher aggrieved by that action could invoke the provisions of Section 9 of the MEPS Act, 1977. But, that did not mean that the teacher should not make a grievance against the order passed by the Education Officer in writ proceedings before this Court. The Court noted that since the order impugned was passed by the Education Officer, the teacher cannot approach the Tribunal by invoking the provision of Section 9 and hence, a petition before this Court was maintainable. (C) The question of approval and the maintainability of an appeal under Section 9: -(i) In Anna Manikrao Pethe v. The Presiding Officer, School Tribunal the School Tribunal had upheld the termination of the services of a teacher and the decision of the Tribunal was challenged on the ground that the Tribunal had erred in holding that the Petitioner was not a qualified teacher. The Division Bench held that though the Petitioner was provided with an opportunity to complete his B.Ed. Degree, he did not complete the degree course until after his services came to be discontinued. The Division Bench held that the Petitioner was an untrained teacher and was appointed on a purely temporary basis during each Academic Year. Consequently, such a teacher was not entitled to claim per-

manency. However, while disposing of the petition, the Division Bench made general observations to the following effect: Page 0074 While disposing of this petition, we deem it appropriate to observe that when such applications under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, are filed before the School Tribunals by the teachers challenging any act of termination on the part of the Management, it will be necessary for the Tribunal to frame and decide three preliminary issues, viz., whether the School was a recognised school as defined under the M.E.P.S. Act; whether the appointment of the concerned teacher was made as per Section 5 of the M.E.P.S. Act and the Rules thereunder: and whether such an appointment has been approved by the Education Officer in pursuance of the provisions of the Act as well as the Rules framed thereunder including the Government Resolutions issued from time to time regarding reservations etc. These preliminary points are required to be framed and decided before the appeal proceeds on merits and even if such points are not raised by any of the parties to the appeal, it would be proper on the part of the Tribunal to frame such issues suo motu before examining the merits of the case. In case the findings to any of the preliminary issues are in the negative, the appeal must fail then and there itself, so far as the relief of reinstatement/continuation in service is concerned. (ii) In Shailaja Ashokrao Walse v. State of Maharashtra a Division Bench held that while the Secondary School Code, the MEPS Act and the Rules do not specifically provide for the grant of approval to appointments of the teaching staff by the Education Officer nonetheless it must be presumed that the scheme of the Code, the Act and the Rules"envisage and imply the action of approval by the Education Officers in respect of the appointment of the school teachers." The Division Bench held thus: We are, therefore, of the view that an appointment of a teacher either in the primary school, secondary school, junior college, etc. is required to be approved by the Education Officer and the Education Officer while discharging this duty performs an implied statutory function under the provisions of the M.E.P.S. Rules. 4. Submissions: 4.1 The Court has been assisted in these proceedings by the Associate Advocate General for the State; by Counsel appearing on behalf of the managements; and on behalf of the employees. The submissions that have been urged by the Associate Advocate General are these: -(i) In cases where there is no express provision excluding the jurisdiction of the Civil Court, it is necessary to determine as to whether there is an implied bar to that jurisdiction; Page 0075 -(ii) In determining as to whether the jurisdiction of a Civil Court is impliedly barred, the scheme of the enactment and its provisions would have to be examined to determine whether the statute provides a right and a remedy and whether the procedure provided therein will be conclusive, giving finality and thereby excluding the jurisdiction of the Court; -(iii) The object of the MEPS Act, 1977 is to provide a speedy, inexpensive and effective forum for the resolution of disputes arising between employees of private schools and their employers by recourse to a Tribunal which would not be shackled by procedural law and the appellate remedies provided against decisions of Civil Courts. The Legislature therefore, has considered it to be in the interest of teachers that their disputes should be adjudicated by the

forum created by the legislation; -(iv) The following aspects of the MEPS Act, 1977 are significant, namely, (i) By Section 10(1), the Act cuts down the first round of litigation which takes place in the Trial Court by making the Tribunal equivalent to an Appellate Court; (ii) The Tribunal hasbeen given complete freedom to decide upon its procedure thereby obviating strict adherence to the procedural formalities laid down in the Code of Civil Procedure, 1908; (iii) The Tribunal is required to dispose of the appeal expeditiously and to endeavour to do so within a period of three months. Where it is unable to do so, the Tribunal is duty bound to record reasons for the delay. The exclusion of legal practitioners in Section 14 except with the special permission of the Tribunal aims at reducing the period taken for the disposal of appeals; (iv) Even though the Act does not provide for a remedy before the Tribunal in respect of each and every grievance of an employee of a private school, it is not necessary in order to establish an implied bar of the jurisdiction of the Civil Court that a remedy should be available as against every grievance. To the extent to which the Legislature has provided a remedy before the Tribunal, the jurisdiction of the Civil Court in those cases would be impliedly barred; -(v) The statute in the present case creates rights (e.g. Sub-section (6) of Section 4) and provides a remedy for the enforcement of such rights (Section 9) and the decision of the Tribunal is made final (Section 12). The jurisdiction of the Civil Court is hence impliedly barred; -(vi) The M.E.P.S. Act, does not merely regulate pre-existing rights and/or duties. The rights and duties regulated by the Act were not pre-existing rights in common law. However, In view of the law laid down by the Supreme Court, it was submitted that where an action in issue is a total nullity, the Civil Court will have jurisdiction. -(vii) Where the issue of seniority, or of the grant or rejection of an approval by the Education Department arises as incidental or ancillary to the main issue that is to be decided by the Tribunal under Section 9 of the Act, the Tribunal must have the jurisdiction to decide all such incidental and ancillary issues. Where a decision taken by the Education Officer under Rule 12 is treated as the basis for any action taken by the management and that action falls within the purview of Section 9 of the Page 0076 Act, then in that eventuality even the order passed under Rule 12 can be questioned before the Tribunal. A similar position would exist where the non-grant of approval for an appointment to the employee is placed in issue before the Tribunal as an incidental or ancillary matter; -(viii) In so far as the grant of approval is concerned, recognised private schools which are aided by the State receive the amount of grant in advance on the basis of the record of employees produced before the concerned authorities of the Education Department. As the salaries of such employees are being borne out from the public exchequer, the Education Department is entitled to satisfy itself, upon examination of the record, that employees who draw salaries are qualified and that they are appointed by following the procedure established by law. This exercise can be performed by granting approval to the appointment of employees of such aided schools. However, the question of approval to the appointment of employees is in relation to the grant in aid by the State Government, this being a matter between the management and the State. The issue of approval is only relevant to the receipt of aid from

the State. 4.2 Counsel appearing on behalf of the management has similarly submitted that (i) The purport of the Act is to cover the entire gamut of relations between employers and employees of private schools. Section 3 which defines the application of the Act and Section 4 under which a rule making power has been conferred would show that the area of recruitment, qualifications, duties, pay, allowances, conditions of service and code of conduct are all covered by the Act; (ii) The Tribunal constituted by the Act is vested with the powers of a Court under the Code of Civil Procedure, 1908 and has a wide jurisdiction in regard to the remedies which can be provided under Section 11 of the Act. Section 12 provides that the decision of the Tribunal shall be final and binding on an appeal which is entertained and disposed of and Section 13 provides for penal sanctions in aid of enforcement of the orders of the Tribunal; (iii) In respect of subjects which fall in Section 9, the Act enunciates a comprehensive scheme. The Act creates the rights, prescribes remedies, provides the forum and lays down the procedure for execution of orders. However, in matters which are not covered by Section 9, the remedy of a civil suit is available; (iv) The question of appointment is governed by Sections 4 and 5 and the conditions of service are prescribed by the Rules. Neither the Act, nor the Rules provide for an approval of the Education Officer to an appointment made by the management. Approval is relevant to the receipt of grant-in-aid and the denial of approval cannot invalidate an appointment; (v) The decision of the Education Officer under Rule 12 is not final and when a supersession takes place consequent upon a decision of the Education Officer, the question of seniority can be decided as an incidental question. 4.3 On behalf of the employees, the submissions before the Court are as follows: -(i) Under Section 9 of the Code of Civil Procedure, 1908, the Court has jurisdiction to try all suits of a civil nature except for those suits of which cognizance is either expressly or impliedly barred; (ii) There is no Page 0077 express bar to the jurisdiction of a Civil Court under the MEPS Act, 1977 and such an exclusion cannot be readily inferred; (iii) The School Tribunal is not vested with the wide powers which a Civil Court exercises in a suit; (iv) Remedies normally associated with a civil action are not provided by the Act; (v) No special rights or liabilities are created and all the rights and liabilities were pre-existing rights; (vi) The Act does not contain provisions for a complete and effective determination of rights and liabilities specified by the Act; (vii) No procedure is laid down by the Act for the execution of orders passed by the School Tribunal; (viii) The Tribunal has no power to issue directions to governmental authorities. The Division Bench of this Court having held in Pethe's case that an appeal before the Tribunal is not maintainable where an employee has been dismissed on the ground of non-approval by the Education Department, the only remedy of the employee would be to challenge the termination by seeking a declaration before the Civil Court; (ix) An appeal is provided only in four contingencies and not in other cases; (x) There is no express provision in the Act for transfer of suits which were pending on the date when the Act was enforced; (xi) No provision for an appeal against the order passed by the School Tribunal has been made by the Act as is available against a decree of the Civil Court; (xii) The School Tribunal exercises the jurisdiction of an Appellate

Forum which cannot be equated with the procedure adopted by the Civil Courts while trying suits; (xiii) Legal practitioners are not allowed to practice before the School Tribunal as of right. Hence, it has been submitted that the scheme and object of the Act should not lead to the conclusion that the jurisdiction of the Civil Court is barred. 4.4 These submissions now fall for consideration. 5. The Object and the Scheme of the Legislation: 5.1 The Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, was enacted by the State Legislature "to regulate the recruitment and conditions of service in certain private schools". The Legislature considered it appropriate to do so, as the preamble states, "with a view to providing such employees security and stability of service to enable them to discharge their duties towards the pupils and their guardians in particular, and the Institution and the society in general, effectively and efficiently." The Legislature also prescribed the duties and functions of employees in private schools in order to ensure accountability to the management. The Preamble, as the trite legal phrase goes, is a key to open the mind of the framers of the legislation. 5.2 The Statement of Objects and Reasons accompanying the introduction of the Bill 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 is to the following effect: 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 Page 0078 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 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. -2. 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. 5.3 The circumstances in which a law has been enacted by the competent Legislature provide an important indicator to the Court to the historical background and the situation that was sought to be remedied by the legislation. In the State of Maharashtra, executive orders had governed the conditions of service of employees of Schools and Junior Colleges. The spread of education being a

part of the stated objective and policy of the State Government, the number of institutions had rapidly grown. That meant an increase in recruitment of employees. Disputes between managements and their employees were instituted before the regular Courts. The Legislature considered it appropriate to enact legislation to give statutory force to the executive orders which had hitherto held the field and to confer a rule making power to govern the conditions of service. The object of establishing a Tribunal was to provide expeditious justice to the employees of educational institutions governed by the Act so as to ensure security and stability of service. The Statement of Objects and Reasons cannot override the express provisions of a law enacted by the competent Legislature. The Statement, however, is an important interpretative tool in providing to the Court, the reasons for the enactment of the law, the deficiency in the existing provisions, the mischief that was sought to be remedied and the purposes that are sought to be achieved. The Court must lean in favour of a purposive interpretation. An important part of the object of the legislation was to ensure speedy and expeditious justice to employees of educational institutions governed by the law. The constitution of Tribunals was intended to achieve that purpose. Ensuring security and stability of service to employees of educational institutions would enable employees to be free of those problems Page 0079 which detract from their ability to pursue the cause of education. Long standing and festering problems detract from an efficient management of human resources and the energies of teachers and non-teaching staff ought not to be dissipated in fighting long drawn legal battles. The constitution of the Tribunal was intended to subserve this salutary object in the public interest. 6. Scheme of the Act: 6.1 Section 3 of the Act states that the provisions of the Act shall apply to all private schools in the State of Maharashtra whether or not they receive grant-in-aid from the State. In recognition of the constitutional right of minority institutions, an exception is carved out by Sub-section (2) of Section 3.10 Section 4 provides as follows: Section 3(2) provides as follows: "3(2) Notwithstanding anything contained in Sub-section (1), the provisions of this Act shall not apply to the recruitment of the Head of a minority School and any other persons (not exceeding three) who are employed in such school and whose names are notified by the Management to the Director or, as the case may be, the Deputy Director for this purpose. 4. Terms and conditions of service of employees of private schools: (1) Subject to the provisions of this section, the State Government may make rules providing for the minimum qualifications for recruitment (including its procedure), duties, pay, allowances, postretirement and other benefits, and other conditions of service of employees of private schools and for reservation of adequate number of posts for members of the backward classes: Provided that, neither the pay nor the rights in respect of leave of absence, age of retirement and postretirement benefits and other monetary benefits of an employee in the employment of an existing private school on the appointed date shall be varied to the disadvantage of such employee by any such rules. -(2) Every employee of a private school shall be governed by such Code of Conduct as may be prescribed. On the violation of any provision of such Code of Conduct, the employee shall be liable to disciplinary action after

conducting an enquiry in such manner as may be prescribed. -(3) If the scales of pay and allowances, postretirement and other benefits of the employees of any private school are less favourable than those provided by the rules made under Sub-section (1), the Director shall direct in writing the management of such school to bring the same up to the level provided by the said rules, within such period or extended period as may be specified by him. -(4) Failure to comply with any direction given by the Director in pursuance of Sub-section (3) may result in the recognition of the school concerned being withdrawn, provided that the recognition shall not be withdrawn unless the management of the school concerned has been given a reasonable opportunity of being heard. -(5) No employee working in a private school shall work in any coaching class. If any employee, in contravention of this provision, works in any Page 0080 coaching class, his services shall be liable to be terminated by the management, provided that no such order of termination shall be issued unless the employee concerned has been given a reasonable opportunity of being heard. -(6) No employee of a private school shall be suspended, dismissed or removed or his services shall not be reduced in rank, by the management, except in accordance with the provisions of this Act and the rules made in that behalf. Under Sub-section (1) of Section 4, a rule making power has been conferred upon the State Government to govern the entire spectrum of service conditions consisting of the procedure and qualifications for recruitment, duties, pay, allowances, conditions of service, reservation and retiral benefits. Sub-section (2) makes provisions for a code of conduct. Sub-section (6) of Section 4 places an embargo on the management suspending, dismissing, removing and from reducing in rank, an employee of a private school except in accordance with the Act and the Rules. The conditions of service of employees of private schools are not merely in the contractual realm. They are prescribed by statute, regulated by statute and possess a 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 a permanent vacancy has to be on probation for a period of two years under Sub-section (2). Consistent with the object of the Legislature to provide security and stability of service, Sub-section (2) lays down that subject to the provisions of Sub-sections (3) and (4), an employee shall on the completion of his 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 probationer if the service is not found satisfactory during the period of probation. Section 6 provides for the obligations of the Head of a private school and Section 7 lays down the procedure for resignation by an employee of a private school. Section 16 empowers the State Government to make rules for carrying out the purposes of the Act. Sub-section (2) of Section 16 prescribes that without prejudice to the generality of that power, the rules may provide for the following matters, namely: -(a) the minimum qualifications for recruitment of employees of private schools (including its procedure); -(b) their scales of pay and allowances; -(c) their post-retirement and other benefits; -(d) the other conditions of service of

such employees including leave, superannuation, re-employment and promotion; -(e) the duties of such employees and Code of Conduct and disciplinary matters; -(f) the manner of conducting enquiries; -(g) any other matter which is required to be or may be prescribed. The State Government is empowered to make rules with retrospective effect subject to the limitation that they shall not prejudicially affect the interest of Page 0081 any person to whom such rules may be applicable. Every rule made under the Act is required to be placed before each house of the State Legislature and is subject to modification by the Legislature. 6.2 These provisions seek to achieve the object of the Act by regulating and governing the entire field of relations between an employer and an employee of a private school. The broad sweep of the regulatory provisions of the Act extends the rule making power to every aspect of the relationship of employment in a recognised private school. The expression"employee" is definedby Clause (7) of Section 2 to mean any member of the teaching and non-teaching staff of a recognised school. The expression "private school" is defined to mean a recognised school established or administered by a management other than the Government or a local authority. The expression "recognised" for the purposes of the Act is defined by Clause (21) of Section 2 to mean recognised by the Director, the Divisional Board or the State Board or by any of such Boards. The expression "school" is defined as follows in Clause (24) of Section 2: (24) "School" means a primary school, secondary school, higher secondary school, junior college of education or any other institution by whatever name called including, technical, vocational or art institution or part of any such school, college or institution, which imparts general, technical, vocational art or, as the case may be, special education or training in any faculty or discipline or subject below the degree level. 6.3 The heart of the matter consists of the provisions of the Act relating to the constitution of School Tribunals. The State Government is empowered by Sub-section (1) of Section 8 to constitute one or more such Tribunals and to define the jurisdiction of each Tribunal. Each Tribunal is to consist of one person. The qualifications for appointment as Presiding Officer of the Tribunal are provided by Sub-section (3) of Section 8 which is as follows: 8(3) A person shall not be qualified for appointment as a Presiding Officer of a Tribunal unless- -(a) he is holding or has held a judicial office not lower in rank than that of Civil Judge, (Senior Division); -(b) he has practised as an Advocate or Attorney for not less than seven years; or -(c) he is holding or has held an office not lower in rank than that of Under Secretary to Government, Assistant Commissioner of Labour or Deputy Director of Education in the State. Section 9 provides a right of appeal to the Tribunal to employees of private schools. Sub-section (1) of Section 9 provides as follows: (1) Notwithstanding anything contained in any law or contract for the time being in force, any employee in a private school,- -(a) who is dismissed or removed or whose services are otherwise terminated or who is reduced in rank, by the order passed by the Management; or -(b) who is superseded by the Management while making an appointment to any post by promotion. and who is aggrieved, shall Page 0082 have a right of appeal and may appeal against any such order or supersession to the Tribunal constituted under Section 8: Provided that, no such appeal shall lie to the Tri-

bunal in any case where the matter has already been decided by a Court of competent jurisdiction or is pending before such Court, on the appointed date or where the order of dismissal, removal, otherwise termination of service or reduction in rank was passed by the Management at any time before the 1st July, 1976. A period of limitation of 30 days is provided by Sub-section (2) for filing an appeal. By Sub-section (3), the Tribunal is empowered to condone the delay in filing an appeal within the prescribed period if sufficient cause is shown. Section 10 deals with the general powers and procedure of a Tribunal and is to the following effect: 10. General powers and procedure of Tribunal: (1) For the purposes of admission, hearing and disposal of appeals, the Tribunal shall have the same powers as are vested in an Appellate Court under the Code of Civil Procedure, 1908, and shall also have the power to stay the operation of any order against which an appeal is made, on such conditions as it may think fit to impose and such other powers as are conferred on it by or under this Act. -(2) The Presiding Officer of the tribunal shall decide the procedure to be followed by the Tribunal for the disposal of its business including the place or places at which and the hours during which it shall hold its sittings. -(3) Every appeal shall be decided as expeditiously as possible. In every case, endeavour shall be made by the Tribunal to decide an appeal within three months from the date on which it is received by the Tribunal, if the Tribunal is unable to dispose of any appeal within this period, it shall put on its record the reasons therefor." The reliefs which the Tribunal can grant are prescribed in Section 11 which is to the following effect: 11. Powers of Tribunal to give appropriate reliefs and directions: (1) On receipt of an appeal, where the Tribunal, after giving reasonable opportunity to both parties of being heard, is satisfied that the appeal does not pertain to any of the matters specified in Section 9 or is not maintainable by it, or there is not sufficient ground for interfering with the order of the Management it may dismiss the appeal. -(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 the 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; Page 0083 -(b) to restore the employee to the rank which he held before reduction or to any lower rank as it may specify; -(c) to give arrears of emoluments to the employee for such period as it may specify; -(d) to award such lesser punishment as it may specify in lieu of dismissal, removal, otherwise termination of service or reduction in rank, as the case may be; -(e) where it is decided not to reinstate the employee or in any other appropriate case, to give to the employee twelve months' salary pay and allowances, if any if he has been in the service of the school for ten years or more and six months' salary pay and allowances, if any if he has been in service of the school for less than ten years, by way of compensation, regard being had to loss of employment and possibility of getting or not getting suitable employment thereafter, as it may specify; or -(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. -(3) It shall be lawful for the Tribunal to recommend to the State Government that any dues directed by it to be paid to the employee, or in case of an order to reinstate the employees any emoluments to be paid to the employee till he is reinstated, may be deducted from the grant due and payable, or that may become due and payable in future, to the Management and be paid to the employee direct. -(4) Any direction issued 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. The decision of the Tribunal on an appeal entertained and disposed of is final in terms of Section 12 which provides as follows: 12. Decision of Tribunal to be final and binding: Notwithstanding anything contained in any law or contract for the time being in force, the decision of the Tribunal on an appeal entertained and disposed of by it shall be final and binding on the employee and the Management; and no suit, appeal or other legal proceeding shall lie in any Court, or before any other Tribunal or authority, in respect of the matters decided by the Tribunal. Under Section 13, a penalty has been provided where the management fails, without any reasonable excuse to comply with any directions of the Tribunal. Upon conviction, graded provisions for imprisonment and fine are provided for the first and subsequent offences. Sub-sections (1) and (2) of Section 13 in so far as they are material provide as follows: 13. Penalty to Management for failure to comply with Tribunal's directions: (1) If the Management fails, without any reasonable excuse to comply with any direction issued by the Tribunal under Section 11 or any order Page 0084 issued by the Director under Clause (a) of Sub-section (1) or Sub-section (4) of Section 4A within the period specified in such direction, or as the case may be, under Sub-section (5) of Section 4A or within such further period as may be allowed by the Tribunal or Director, as the case may be, the Management shall, on conviction, be punished, -(a) for the first offence, with imprisonment for a term which may extend to fifteen days or with fine which may extend to fifty thousand rupees or with both: Provided that, in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the Court, the fine shall not be less than ten thousand rupees and -(b) for the second and subsequent offences, with imprisonment for a term which may extend to fifteen days or with fine which may extend to seventy five thousand rupees, or with both. Provided that, in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the Court, the fine shall not be less than twenty thousand rupees. -(2) (a) Where the Management committing an offence under this section is a society, every person, who at the time the offence was committed, was in charge of, and was responsible to the society, for the conduct of the affairs of the society, as well as the society, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly; Provided that, nothing contained in this Sub-section shall render any person liable to the punishment, if he proves that the offence was committed without his knowledge or that he had exercised

all due diligence to prevent the commission of the offence. -(b) Notwithstanding anything contained in Clause (a) where the offence has been committed by a society and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any president, chairman, secretary, member, Head or manager or other officer or servant of the society, such president, chairman, secretary, member, head or manager or other officer or servant concerned shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. 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 incorporates in its broad sweep every aspect of the relationship of employment with the management of a recognised private school. The procedure and mode of making appointments, qualifications, seniority, promotion, reservations, pay and allowances, disciplinary jurisdiction and post Page 0085 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; -(iii) The Legislature has constituted the Tribunal as an Appellate Tribunal over decisions of the managements 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 the 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 the 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 of service or if it is otherwise illegal or improper. The right of appeal is full and complete, untramelled by procedural or substantive limitations. -(v) The Tribunal is vested with the power to direct the management: (i) To reinstate the employee on the same or a lower post; (ii) To restore the employee to the rank held before reduction or to a lower rank; (iii) To provide for arrears of emoluments to the employee; (iv) To award a lesser punishment; (v) To award compensation in lieu of reinstatement to the extent provided in Clause (e), where the Tribunal does not consider it appropriate to reinstate the employee or in any other appropriate case regard being had to the loss of employment and the possibility of getting Page 0086 or not getting suitable employment; (vi) To award other relief to the employee and to observe such other conditions as the Tribunal may specify, having regard to the circumstances of the case; -(vi) Both Section 9 and Section 12 are prefaced by nonobstante provisions which give overriding effect "notwithstanding anything contained in any law or contract for the time being in force". Under Section 12, the decision of the Tribunal on an appeal entertained and disposed of by it, is to be final and binding on the employee and the management. Consequently, no appeal or other legal proceedings can lie in any Court or before any other authority or Tribunal in respect of matters decided by the Tribunal. 7. Exclusion of Jurisdiction: 7.1 A discussion of the question as to whether the provisions of an enactment bar the jurisdiction of ordinary Civil Courts must of necessity trace its origin to the locus classicus on the subject. The principles of law that were enunciated in the judgment of the Supreme Court in Dhulabhai v. State of Madhya Pradesh have consistently been reiterated and followed thereafter. Chief Justice M. Hidayatullah speaking for a Constitution Bench of the Supreme Court formulated the principles that govern such cases. Those principles are as follows: (1) Where the statute gives a finality to the orders of the special tribunals the Civil Courts' jurisdiction must be held to be excluded if there is adequate remedy to do what the Civil Courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure. -(2) Where there is an express bar of the jurisdiction of the Court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil Court. Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability

and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in Civil Courts are prescribed by the said statute or not. -(3) Challenge to the provisions of the particular Act as ultra vires cannot be brought before Tribunals constituted under the Act. Even the High Court cannot go into that question on a revision or reference from the decision of the Tribunals. -(4) When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A Page 0087 writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit. -(5) Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegally collected a suit lies. -(6) Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevant enquiry. -(7) An exclusion of the jurisdiction of the Civil Court is not readily to be inferred unless the conditions above set down apply. The exclusion of the jurisdiction of a Civil Court is not readily inferred. Section 9 of the Code of Civil Procedure, 1908 provides that Courts shall have jurisdiction to bring all suits, "excepting suits of which the cognizance is either expressly or impliedly barred. Where there is no express exclusion, the intent of the Legislature must be examined with reference to the rights created by the legislation, the remedies provided and the scheme of the Act. Where the statute gives finality to the orders of a Special Tribunal the jurisdiction of the Civil Court is held to be excluded if there is an adequate remedy to do what the Civil Court would normally do in the suit. 7.2 In Premier Automobiles Ltd. v. Kamlakar Shantaram Wadke a Bench of three Learned Judges of the Supreme Court formulated the principles to determine the jurisdiction of a Civil Court in relation to industrial disputes thus: (1) If the dispute is not an industrial dispute, nor does it relate to enforcement of any other right under the Act the remedy lies only in the civil Court; -(2) If the dispute is an industrial dispute arising out of a right or liability under the general or common law and not under the Act, the jurisdiction of the Civil Court is alternative, leaving it to the election of the suitor concerned to choose his remedy for the relief which is competent to be granted in a particular remedy. -(3) If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suitor is to get an adjudication under the Act. -(4) If the right which is sought to be enforced is a right created under the Act such as Chapter VA then the remedy for its enforcement is either Section 33C or the raising of an industrial dispute, as the case may be." The indicators which emerge from Premier Automobiles are: (i) Whether a dispute relates to the enforcement of a right or an obligation created under Page 0088 the Act; or (ii) Whether the dispute arises out of a right or liability under the general or common law and not under the Act. 7.3 In Rohtas Industries Ltd. v. Rohtas Industries Staff Union while adverting to the judgment in Premier

Automobiles the Supreme Court observed thus: The Industrial Disputes Act is a comprehensive and selfcontained Code so far as it speaks and the enforcement of rights created thereby can only be through the procedure laid down therein. Neither the civil court nor any other Tribunal or body can award relief. The Court observed that an Act which creates rights and remedies has to be considered as one homogeneous whole. It has to be regarded uno flatu, in one breath, as it were. The enforcement of the right or obligation must be by a remedy provided in the statute itself. In Raja Ram Kumar Bhargava v. Union of India . Mr. Justice M.N. Venkatachaliah (as the Learned Chief Justice then was) expounded upon the issue as to whether the right that was created by a statute is or is not a right which pre-existed in common law. Where the right created by a statute is not a preexisting right under common law and the statute has provided a machinery for enforcement with a finality attached thereto, the jurisdiction of the Civil Court would be regarded as impliedly barred even in the absence of a specific statutory exclusion. The Learned Judge observed thus: Generally speaking, the broad guiding considerations are that wherever a right, not pre-existing in common law, is created by a statute and that statute itself provided a machinery for the enforcement of the right, both the right and the remedy having been created uno flatu and a finality is intended to the result of the statutory proceedings, then, even in the absence of an exclusionary provision the civil courts' jurisdiction is impliedly barred. If, however, a right pre-existing in common law is recognised by the statute and a new statutory remedy for its enforcement provided, without expressly excluding the civil courts' jurisdiction, then both the common law and the statutory remedies might become concurrent remedies leaving open an element of election to the persons of inherence. 7.4 The subsequent judgment of the Supreme Court in Rajasthan State Road Transport Corporation v. Krishna Kant emphasises that an important aspect which must guide statutory interpretation is the object of the Legislature to ensure that employees are not caught in the labyrinth of Page 0089 Civil Courts with their appeals, revisions and elaborate procedural laws. The observations of the Supreme Court have a direct bearing on the subject at hand: At the same time, we must emphasise the policy of law underlying the Industrial Disputes Act and the host of enactments concerning the workmen made by Parliament and State legislatures. The whole idea has been to provide a speedy, inexpensive and effective forum for resolution of disputes arising between workmen and their employers. The idea has been to ensure that the workmen do not get caught in the labyrinth of Civil Courts with their layers upon layers of appeals and revisions and the elaborate procedural laws, which the workmen can ill afford. The procedures followed by Civil Courts, it was thought, would not facilitate a prompt and effective disposal of these disputes. As against this, the Courts and Tribunals created by the Industrial Disputes Act are not shackled by these procedural laws nor is their award subject to any appeals or revisions. Because of their informality the workmen and their representatives can themselves prosecute or defend their cases. These forums are empowered to grant such relief as they think just and appropriate. They can even substitute the punishment in many cases. They can make and remake the contracts, settlements, wage

structures and what not. Their awards are no doubt amenable to jurisdiction of the High Court under Article 226 as also to the jurisdiction of this Court under Article 32, but they are extra-ordinary remedies subject to several self-imposed constraints. It is, therefore, always in the interest of the workmen that disputes concerning them are adjudicated in the forums created by the Act and not in a Civil Court. That is the entire policy underlying the vast array of enactments concerning workmen. This legislative policy and intendment should necessarily weigh with the Courts in interpreting these enactments and the disputes arising under them. On the question of exclusion of jurisdiction, the Supreme Court summarised the propositions in para 32 of the judgment. The first, second, third and seventh propositions would be of a particular relevance to the controversy before the Court and they are as follows: (1) Where the dispute arises from general law of contract, i.e. where reliefs are claimed on the basis of the general law of contract, a suit filed in civil court cannot be said to be not maintainable, even though such a dispute may also constitute an "industrial dispute" within the meaning of Section 2(k) or Section 2A of the Industrial Disputes Act, 1947. -(2) Where, however, the dispute involves recognition, observance or enforcement of any of the rights or obligations created by the Industrial Disputes Act, the only remedy is to approach the forums created by the said Act. -(3) Similarly, where the dispute involves the recognition, observance or enforcement of rights and obligations created by enactments like Industrial Employment (Standing Orders) Act, 1946 - which can be called 'sister enactments' to Industrial Disputes Act - and which do Page 0090 not provide a forum for resolution of such disputes, the only remedy shall be to approach the forums created by the Industrial Disputes Act provided they constitute industrial disputes within the meaning of Section 2(k) and Section 2A of Industrial Disputes Act or where such enactment says that such dispute shall be either treated as an industrial dispute or says that it shall be adjudicated by any of the forums created by the Industrial Disputes Act. Otherwise, recourse to Civil Court is open. -(7) The policy of law emerging from Industrial Disputes Act and its sister enactments is to provide an alternative dispute resolution mechanism to the workmen, a mechanism which is speedy, inexpensive, informal and un-encumbered by the plethora of procedural laws and appeals upon appeals and revisions applicable to civil courts. Indeed, the powers of the Courts and Tribunals under the Industrial Disputes Act are far more extensive in the sense that they can grant such relief as they think appropriate in the circumstances for putting an end to an industrial dispute. In Dhruv Green Field Ltd. v. Hukam Singh the Supreme Court emphasised that when there is no express exclusion of the jurisdiction of a civil court, the Court would enquire whether an adequate and efficacious remedy is provided under the law and if the answer is in the affirmative, it can safely be concluded that the jurisdiction of the Civil Court is barred. The judgment in Dhulabhai was reiterated in Church of North India v. Lavajibhai Ratanjibhai and Devinder Singh v. State of Haryana . The Court held that even when the statute has given finality to the order of the Special Tribunal, the Civil Court's jurisdiction can be regarded as having been excluded if there is adequate remedy to do what the Civil Court would normally do in a suit. 7.5 The principle is that in the

absence of an express provision excluding the jurisdiction of the Civil Court, an enquiry into whether there is an implied bar to the exercise of such jurisdiction would depend upon the scheme of the Act and the relevant provisions. For, it is an analysis of the statutory scheme and the substantive provisions which would guide the Court to determine whether the statute has provided a right and a remedy and whether the procedure provided therein would impart conclusiveness and finality to the orders of the Tribunal (Shri Panch Nagar Parakh v. Purushottam Das) . Finally, it would be necessary to advert to the judgment in Chandrakant Tukaram Nikam v. Municipal Page 0091 Corporation of Ahmedabad where the Supreme Court emphasised that where the Legislature has enacted a law to provide for a speedy, inexpensive and effective forum for the resolution of disputes between employers and employees in order to obviate delay, expense and procedural rigidity involved in litigation before the Civil Courts, an exclusion of the jurisdiction would be implied particularly where the legislation has conferred a wide and effective power to grant relief to the Special Tribunal. 8. Does the statute only recognise preexisting common law, rights and remedies: 8.1 An important circumstance which has a bearing on the question as to whether the jurisdiction of the Civil Court is impliedly excluded, is whether the statute creates or, conversely only recognises rights and remedies which existed in common law. The provisions contained in the MEPS Act, 1977 have conferred a rule making power on the State Government to regulate every aspect of the relationship of employment with managements of recognised private schools. The conditions of service of employees of private schools have a statutory mandate and character. The statutory recognition of the conditions of service covers every aspect - as this judgment explored earlier - from the procedure for appointment, confirmation, promotion, reservations, qualifications, seniority, termination, disciplinary jurisdiction to post retiral benefits. The relationship of employment which hitherto found its origin in terms which were purely contractual is now governed by statutory provisions and by the rules made by the delegate of the Legislature in the exercise of the rule making power. To use an oft quoted phrase, a matter of contract has ceased to lie in the contractual realm and has assumed a character of status governed and regulated by law. The rights of employees, the liabilities of managements and the duties of employees have been statutorily enforced by the provisions of the Act and the Rules made thereunder. 8.2 When the rights and obligations of parties to a contract of personal service lie in the realm of contract, there are under the common law recognised limitations upon the power of an employee to demand specific performance or the enforcement of an obligation under the contract. Ordinarily, a contract of personal service is incapable of specific performance and the remedy of an employee aggrieved by a wrongful act of termination must sound in damages. 8.3 Recognising this principle, the Supreme Court in Executive Committee of Vaish Degree College v. Lakshmi Narain AIR 1976 SC 888 noted that there are three exceptions to this principle and explained the principle and the exceptions thus: On a consideration of the authorities mentioned above, it is, therefore, clear that a contract of personal service cannot ordinarily be specifically Page 0092 enforced and a Court normally would not

give a declaration that the contract subsists and the employee, even after having been removed from service can be deemed to be in service against the will and consent of the employer. This rule, however, is subject to three well recognized exceptions - (i) where a public servant is sought to be removed from service in contravention of the provisions of Article 311 of the Constitution of India; (ii) where a worker is sought to be reinstated on being dismissed under the Industrial Law; and (ii) where a statutory body acts in breach or violation of the mandatory provisions of the statute. The first exception under Article 311 of the Constitution would have no application to a member of the teaching or non-teaching staff of a recognised private institution. It was as a result of industrial legislation conceived in the public interest that adjudicatory bodies governed by enactments such as the Industrial Disputes Act, 1947 came to be vested with the jurisdiction to award reinstatement where an employee had been wrongfully terminated. A considerable body of law has evolved around the provisions of Section 11A of the Industrial Disputes Act, 1947. The innovation made by industrial legislation was that the industrial adjudicator was empowered to create even new conditions of service or to modify existing conditions as for instance, upon a reference to adjudication on a demand for wage revision under Section 10 of the Industrial Disputes Act, 1947. The third exception which Vaish Degree College recognised is where a statutory body acts in breach or violation of the mandatory provisions of the statute. A statutory body is a body which is constituted by statute. An entity which is merely subject to the regulatory provisions of law does not, by being regulated, become a statutory body. 8.4 The decision in Vaish Degree College was followed by ajudgment of the Supreme Court in Smt. J. Tiwari v. Smt. Jwala Devi Vidya Mandir . The case before the Supreme Court arose out of a judgment of the Allahabad High Court which took the view that though the dismissal of a Principal of an Intermediate College was wrongful, she was entitled only to a decree for damages and not to a declaration that she continued in service or to a consequential order of reinstatement. The Supreme Court negatived the submission that the educational institution was a statutory authority as a result whereof the Appellant would be entitled to obtain a declaration of continuance in service upon the termination being found to be unlawful. The Supreme Court held that while the regulations of the University or the provisions of the Education Code framed by the State Government may be applicable to the institution and the University may be entitled to disaffiliate the institution if the provisions of the Code are violated and Government may be entitled to withdraw the educational grant payable to the institution, that did not render the institution a statutory body. Holding that such a contract could not be specifically performed, the Supreme Court observed as follows: Page 0093 We may further assume that since this procedure was not followed by the Society, the order terminating the appellant's service is unlawful. But the appellant is an employee of a private institution and their mutual rights and obligations are governed by the terms of the contract, Ex.1, which was entered into by them in 1953. Since under those terms the appellant's services were liable to be terminated on three months' notice, all that she would be entitled to, even if the dismissal is wrongful, is a decree for damages and not

an order of reinstatement or declaration that notwithstanding the termination of her services she continued to be in service. The judgment of this Court in Executive Committee of Vaish Degree College, Shamli v. Lakshmi Narain is a direct authority for this conclusion. In Dipak Kumar Biswas v. Director of Public Instruction the Appellant before the Supreme Court, was appointed as a lecturer in a private aided college. The appointment was subject to the approval of the Director of Public Instruction in the State of Meghalaya. The services of the Appellant were terminated for want of the Director's approval. The High Court held that the Appellant would not be entitled to reinstatement, but to damages since he was not a Government servant, an industrial workman, or an employee of a statutory body. Following the decisions in Vaish Degree College and Jwala Devi Vidya Mandir (supra), the Supreme Court held thus: Even though the Lady Keane Girls College may be governed by the statutes of the University and the Education Code framed by the Government of Meghalaya and even though the college may be receiving financial aid from the government it would not be a statutory body because it has not been created by any statute and its existence is not dependent upon any statutory provision. 8.5 The judgments draw a clear distinction between a statutory body and a body whose actions are regulated by statute. In contemporary times, it is impossible to conceive of areas of human endeavour which are not directly or indirectly regulated by statute. But regulation by statute does not convert the body regulated into a statutory body. 8.6 On behalf of the Respondent -employee, however, reliance was sought to be placed on the judgment of the Supreme Court in Ram Sahan Rai v. Sachiv Samanaya Prabandhak . In that case, the Plaintiff who had moved a suit for a declaration against an order of removal from service was a clerk in the District Co-operative Bank. The Supreme Court held that while the Bank was a Co-operative Society registered under the U.P. Cooperative Societies Act, 1965 and constituted under the U.P. Cooperative Land Development Act, 1964, an examination of the different provisions of rules, bye-laws and regulations indicated that the State Page 0094 Government exercised all pervasive control over the Bank and its employees and the service conditions were governed by statutory rules which prescribed the procedure of disciplinary proceedings. The Bank was regarded as an instrumentality of the State. The Supreme Court held that the Bank was a statutory body and was State within the meaning of Article 12. Hence, where a mandatory provision contained in the rules and regulations had been breached and the order was passed in violation of the principles of natural justice, the third exception to the principle that the contract of personal service cannot ordinarily be enforced would apply. The judgment in Ram Sahan Rai therefore, deals with a situation where the employee in question was employed by an instrumentality of the State within the meaning of of Article 12, a body which was regarded as being a statutory body by virtue of the pervasive control of the State. The submission urged on behalf of the employee is unfounded because the judgment of the Supreme Court does not postulate that a mere regulation of the conditions of service by the provisions of a statute or the rules would render the body concerned a statutory body. The decision in Swamy Atmananda v. Sri Ramakrishna Tapo-

vanam turned on the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1974. Section 53 of the Act provided that no Civil Court shall have jurisdiction to decide any question which by the Act was required to be decided by any authority mentioned in the Act. However, Section 53A provided that notwithstanding anything contained in Section 53, a dispute as to the constitution of any educational agency or as to whether any person or body is an educational agency in relation to any private school or as to the constitution of a School Committee or as to the appointment of a Secretary of the School Committee may be referred to the Civil Court having jurisdiction for its decision. The Supreme Court held that indisputably a dispute with regard to title over immovable property would have to be adjudicated only in the Civil Court. Similarly, a dispute as to who is the real educational agency was not a matter which could be determined by an authority under the provisions of the Act. 8.7 The MEPS Act, 1977 confers upon the Tribunal, the power to allow reliefs which would not be available to a Civil Court exercising jurisdiction in a civil suit. The Tribunal has power to grant reinstatement on the same post or on a lower post. This power cannot be exercised by a Civil Court in a suit for specific performance of a contract of personal service unless a case falling under one of the three exceptions noted above has been established. The Tribunal has the power to restore the employee to the rank which he held before reduction or to a lower rank. The Tribunal may give arrears of emoluments for such period as it may specify. The Tribunal may award a lesser punishment as it may specify in lieu of the punishment which has been imposed by the management. In an appropriate case, where the Tribunal considers that an order of reinstatement should not be passed, it is empowered to grant compensation. The Tribunal is vested with the power to Page 0095 give such other relief to an employee and to observe such conditions as it may specify. These wide ranging remedies are not available when an employee whose contract of personal service is terminated moves the Civil Court on a plea of wrongful termination. A remedy which hitherto would sound only in damages is made meaningful and effective. The Tribunal can in the exercise of its jurisdiction pass orders awarding the reliefs referred to in Sub-section (2) of Section 11, in order to effectuate complete and effective justice. 9. The extent of exclusion: 9.1 The jurisdiction of the Tribunal under Section 9 of the Act is to entertain appeals against certain specified actions of the management of a private school. The actions which can be complained of before the Tribunal are: (i) dismissal; (ii) removal; (iii) a termination otherwise; (iv) reduction in rank; and (v) supersession by the management while making an appointment to a post by promotion. The jurisdiction of the Civil Court would be ousted where the action complained of by the employee falls within any of the categories stipulated in Clauses (a) and (b) of Sub-section (1) of Section 9. One of the submissions is that a recourse to the Tribunal has not been provided against all grievances which employees may have against the management of a private school. In order to sustain an implied exclusion of the jurisdiction of the Civil Court, it is not necessary that the Legislature should have conferred jurisdiction on a Special Tribunal on all aspects. To the extent to which the Legislature has spoken and has created a special forum for

addressing specified grievances of employees, the jurisdiction of the Civil Court must, to that extent, be ousted. The judgment of the Supreme Court in Rohtas Industries (supra) which accepted the uno flatu principle emphasises that in so far as the Industrial Disputes Act, 1947 was a comprehensive and self-contained Code "so far as it speaks", the enforcement of rights created thereby could only be by the procedure laid down therein (para 28 page 435). This principle must equally apply to the construction of the provisions of Section 9 of the MEPS Act, 1977. To the extent to which the Legislature has spoken, the jurisdiction of the Civil Court in matters governed by Section 9 is ousted. 9.2 One of the submissions urged before the Court is that in the group of words "and who is aggrieved", the "and" should be read as "or". So read, the submission is that an employee of a private school would have a comprehensive right to move the School Tribunal against all grievances and not merely those which fall under Clauses (a) and (b) of Sub-section (1) of Section 9. The submission cannot be accepted. Clauses (a) and (b) of Sub-section (1) of Section 9 define categories of action on the part of the managements which can be challenged in an appeal before the School Tribunal. The words "and who is aggrieved", do not create a separate head of challenge. Those words clarify that the intention of Legislature is to confer a right of appeal upon an employee of a private school who is aggrieved by the action of the management falling in the description contained in one of the categories referred to in Clauses (a) and (b) of Sub-section (1). Page 0096 Following the judgment in Dhulabhai (supra), the provision contained in Section 12 of the Act conferring finality on the orders of the Tribunal would not exclude those cases where the provisions of the Act have not been complied with or, the statutory Tribunal has not acted in conformity with the fundamental principles of judicial procedure. 10. The requirement of approval: 10.1 A Division Bench of this Court held in Anna Manikrao Pethe v. Presiding Officer, School Tribunal (supra) that where the appointment of a teacher has not been approved by the Education Officer, the appeal filed by the teacher against an order of termination must fail on that ground alone, this being required to be decided as a preliminary issue. Subsequently, the same view was reiterated in Shailaja Ashokrao Walse v. State of Maharashtra (supra). The Division Bench held therein that the approval of the Education Officer to an appointment made by the management is an implied statutory function under the MEPS Rules. Based on these two decisions, the submission urged on behalf of the employee, is that since an appeal at the behest of an employee whose services had not been approved is not maintainable, the remedy of a suit in a Civil Court cannot be regarded as having been ousted. The issue which falls for consideration is whether the judgments of the two Division Benches in Pethe and Walse (supra) reflect the correct position in law. 10.2 In considering the legal position, it would be necessary to note that the terms and conditions of service of employees of private schools are governed by Sub-section (1) of Section 4. Under the aforesaid provision, the State Government is empowered to frame rules inter alia to provide for the minimum qualifications for recruitment including the procedure for recruitment. Section 5 casts an obligation on the management to fill in, in the manner prescribed, every permanent vacancy in a private school by the appoint-

ment of a person duly qualified to fill in such a vacancy. Before doing so, the management is required to verify from the competent officer in the Education Department whether a suitable person is available on the list of surplus persons. The Rules framed by the State Government enunciate the qualifications required for appointing the Head and members of the teaching staff. Rule 3 provides for the qualifications for and the appointment of a Head. Rule 5 governs the post of Assistant Head and Supervisor. Schedule B read with Rule 6 lays down the qualifications for Assistant Teachers. 10.3 Where the rules contemplate approval in a certain situation, the delegate of the Legislature has expressly provided for such approval. For instance, Rule 3(2) contemplates that if no person with the requisite teaching experience is available on the staff of the school for appointment as a Head of a Secondary School or a Junior College of Education or if qualified persons though available relinquish their claim for appointment to the post of a Head, the management, if it proposes to appoint a person who does not possess teaching experience has to apply to the Deputy Director for relaxing the requirement. The proviso Page 0097 to Rule 6 enables the Education Officer to allow managements to appoint untrained Science Graduate Teachers for teaching Mathematics and Science subjects or untrained Arts or Commerce graduates for teaching other subjects in Secondary Schools in exceptional circumstances such as a non-availability of trained graduates. Such appointments have to be on a year to year basis, subject to the understanding that the teacher will have to obtain a training qualification and that his or her services shall be liable for termination as soon as trained teachers become available. Rule 9(4)(a) contemplates that the upper age limit for appointment of a teacher in a primary school can be relaxed with the previous permission of the Deputy Director in the case of women, ex-servicemen and persons having previous experience. Rule 17(6) contemplates the prior approval of the Education Officer or, as the case may be, the Deputy Director, in the case of a re-employment of a teacher on superannuation. Rule 26(2)(ii) prescribes the condition of prior approval in each case of retrenchment including such cases where the principle of seniority is sought to be departed from. Sub-rule (1) of Rule 33 introduces a requirement of prior approval for placing an employee on suspension. Under Sub-rule (4) of Rule 35, the consequence of suspension without obtaining prior approval is laid down. Rule 37(2)(f) contemplates that while a disciplinary enquiry has to be ordinarily completed within a period of 120 days, the period can be extended in special circumstances by the Enquiry Committee with the prior approval of the Deputy Director. These provisions of the Rules establish that when the rule making authority considers it appropriate to introduce a requirement of approval or as the case may be, prior approval, a specific provision has been made in that regard. 10.4 Rule 8(2) prescribes that after appointments to teaching and non-teaching posts are made, the names and particulars of qualifications and experience of persons so appointed shall be forwarded within a fortnight from the date of each such appointment to the Education Officer and in the case of a Junior College of Education, to the Deputy Director. Rule 8(2) is, therefore, a clear indicator of the fact that what is contemplated under the rule is the forwarding to the Education Officer of the names of the appointees to-

gether with their qualifications and experience. Neither the Act, nor the Rules impose a condition of the grant of approval to an appointment by the Education Officer. The power of appointment is regulated by the Act and the Rules and a denial of approval by the Education Officer cannot invalidate an appointment. 10.5 In several judgments of Learned Single Judges of this Court, the view that has been taken is that the necessity for the management to take the approval of the Education Officer is an incident of the management seeking grant-in-aid but approval is not a condition precedent to the validity of the appointment. In Mahatma Phule Krida Prasarak Mandal v. Suresh T. Waghmode (Writ Petition 3993 of 1999, decided on 11th August 1999), Mr. Justice D. K. Deshmukh, held thus: The matter concerning grant of approval is between the management and the Education Officer and is relevant only for the release of grant by the State Government to the management. Therefore, the School Tribunal has to decide about the nature of appointment of Respondent Page 0098 No. 1 on the basis of the appointment order, advertisement etc. and not on the basis of the approval granted by the Education Officer. The same view was reiterated in a judgment of Mr. Justice V.C. Daga in Ramchandar Ramadhar Yadav v. Hyderabad (Sind) National Collegiate Board (Writ Petition 467 of 1994 decided on 23rd December 2005) where the Learned Judge held thus: "So far as the impugned order of the Tribunal considering the approval granted by the Education Officer to Respondent No. 1 is concerned, the order of the Education Officer granting or refusing to grant approval is not relevant to decide the status of the Petitioner because the question of grant of approval is between the Education Officer and the management and the same is relevant only for the purposes of grant in aid by the State Government. In Laxman Dundappa Dhamanekar v. Management of Vishwa Bharata Seva Samiti the case before the Supreme Court arose out of the Karnataka Private Educational Institutions (Discipline and Control) Act, 1975 and the Grant-in-Aid Code. The High Court had held that since the management had not obtained the approval of the Inspecting Officer to the appointment of the Appellant as Assistant Teacher, the Appellant had ceased to be a teacher in the Institution. The question which fell for determination before the Supreme Court was whether there was any requirement of law for the management to obtain approval in regard to the appointment of a teacher in the institution. Under Section 3 of the Karnataka Act, the State Government was empowered to make rules in respect of matters relating to Code of Conduct and conditions of service of employees. Rule 6 of the Rules framed by the State Government dealt with the method of recruitment. The Supreme Court held that the Act and the statutory Rules constitute a comprehensive Code governing appointment and the method of appointment of teachers and the provisions made thereunder could not be supplemented in the form of administrative instructions: The appointment and conditions of service of teachers in private Government aided institutions are governed by the provisions of the Act and the statutory rules. The said provisions are self-contained Code relating to the appointments of teachers in private aided institutions. The field relating to method of appointment of regular teacher in a Government aided institution is fully covered by the provisions of the Act and the rules and we do not find

any provisions in the Act empowering the Government to supplement the rules by executive instructions. 10.6 The Grant-in-aid Code was held to be a body of administrative instructions issued with the object that the grant allocated by the Government would be distributed and utilised subject to the observance of the conditions stipulated therein. The Supreme Court held that if there was a breach of the conditions governing the grant-in-aid, it was open to Government to take action against Page 0099 the management but this would not invalidate the appointment of a teacher when the method of appointment was covered by the Act and the Rules: The administrative instructions pertaining to grant-in-aid for secondary schools have been issued with the object of extending and improving institutions and for that purpose a sum of money is annually allocated by the Government for distribution as grant-in-aid to schools subject to observance to the conditions specified therein. The conditions embodied in Rule 16 of the Grant-in Code provide for the conditions under which financial assistance would be made available to the Management of the institution by the Government. If there is a breach of the conditions of the grant-in-aid, it is open to the government either to suspend or cancel the financial grant to the institution. But such breach of conditions of the grant-in-Aid Code would not make the appointment of a teacher in the institutions invalid when the method of appointment of teachers in the institution is fully covered by the Act and the statutory rules. It is, however, true that for breach of administrative instructions which have no statutory force, a public servant guilty of such a breach can be subjected to disciplinary action, but the same cannot be pressed into service for action which has the effect of modifying the statutory rules. We are, therefore, of the view that breach of non-statutory Rule 16 would not render the appointments of appellant invalid. 10.7 A management of an institution seeking grant-in-aid is responsible to ensure compliance with the requirement imposed by the State for the disbursal of aid. The rejection of a proposal by the management for disbursal of grant-in-aid constitutes a lis between the management and the Government. In the event that the management fails to comply with the conditions prescribed by Government for the disbursal of aid which has been sanctioned, Government would be entitled to take such measures as are open in law. Government is entitled to ensure that financial aid which it sanctions is used for the purposes for which it is meant. Government is entitled to guard against misuse or diversion and take disciplinary and other measures against errant managements. However, neither the Act, nor the Rules mandate the approval of the Education Department as a condition precedent to a valid order of appointment. The question of approval relates to the disbursal of financial aid. The denial of approval cannot, therefore, invalidate an order of appointment. 10.8 The question that arises is whether a condition of approval can be imposed by the management in the order of appointment and if so whether a termination of services can be sustained on the ground that there has been a non-fulfillment of a contractual condition contained in the order of appointment. The answer is that the terms and conditions of appointment are prescribed in the rules framed under Sub-section (1) of Section 4. Rule 9(5) provides that a candidate appointed to a post has to be issued with a letter of appointment

in accordance with the form prescribed in Schedule D. Schedule D, does not impose any condition providing for prior or post facto approval as a condition for continued employment. An order of appointment cannot be at variance with the conditions prescribed in the rules which have statutory force and effect in conjunction with Section 4(1) of the Act. The mode of Page 0100 appointment and conditions of service of employees of recognised private schools are statutorily prescribed by the Act and the rules and it would, therefore, not be open to the management to impose a condition that the validity of the appointment would be subject to the grant of approval. The State Government as a delegate of the Legislature has not prescribed any such condition in the rules and the management cannot impose such a condition which has not been provided in the rules, as an overriding pre-requisite to the validity of an appointment. 10.9 The observation contained in the judgment of the Division Bench in Anna Manikrao Pethe's case that an appeal would not be maintainable at the behest of a teacher whose appointment has not been approved, does not reflect the correct position in law. Section 9 of the Act confers a right of appeal on an employee of a private school who is aggrieved by the action of the management which falls in the description contained in Clauses (a) and (b) of Sub-section (1) of Section 9. A member of the teaching or non teaching staff of a recognised school is defined to be an employee under Clause (7) of Section 2. The expression"school" is defined in Clause (24) of Section 2 to mean a primary school, secondary school, higher secondary school, Junior College of Education or any other institution by whatever name called including a technical, vocational or art institution or any part thereof which imparts general, technical, vocational, art or special education or training in any faculty, discipline or subject below the degree level. To be "recognised" a school must be recognised, as defined by Clause (21) of Section 2, by the Director, the Divisional Board, the State Board or by an officer authorised by them. 'Private school' is defined by Clause 20 to mean a recognised school established or administered by a management other than by the Government or a local authority. Thus, under Section 9, an appeal is maintainable at the behest of "any employee in a private school". That expression is elucidated by the definitions contained in Clauses 7, 20, 21, and 24 of Section 2. Neither Section 9 nor the definitions which elaborate upon the contents of the expression "employee in a private school" warrant the reading of a precondition of approval by the Education Department. The Court must give effect to the plain and natural meaning of the words used by the Legislature consistent with the statutory definitions contained in the Act. It is no part of the function of the Court to impose a condition which the Legislature did not impose to circumscribe the maintainability of an appeal before the Tribunal. The imposition of a restriction on the jurisdiction of the School Tribunal is a legislative function and it would lie outside the province of the Court to curtail the ambit of the jurisdiction of the Tribunal. The Legislature created the Tribunal and vested it with jurisdiction in certain matters in an effort to safeguard security and stability of service to the class of employees covered therein. The salutary object which the Legislature had in mind would plainly be defeated if the Court were to read a condition which the Legislature did not prescribe

for the maintainability of an appeal before the Tribunal. Such an exercise is impermissible. The judgments in Pethe and Walse, to the extent to which they held to the contrary are not reflective of the correct position in law. Page 0101 10.10 Where the management has proceeded to terminate the services of an employee on the ground of non-approval by the Education Department, the employee aggrieved by the act of termination is entitled to file an appeal before the Tribunal under Section 9. In such an appeal, the Tribunal has the jurisdiction to decide incidental and ancillary questions. The jurisdiction of the Tribunal would extend to deciding incidental and ancillary questions in order to render complete and effective justice. Hence, in adjudicating upon the validity of an order of termination, the Tribunal can enquire into the legitimacy of the foundation upon which the order of termination is based. In appeals under Section 9, the Education Officer is impleaded as a matter of practice and his presence before the Tribunal is necessary in order to enable the Tribunal to adjudicate fully and finally on the dispute. However, it must be borne in mind that under the provisions of Section 11(3) it is lawful for the Tribunal to recommend to the State Government that any dues directed by it to be paid to the employee or in the case of an order of reinstatement, the emoluments liable to be paid may be deducted from the grant due and payable or which becomes due and payable in future to the management and be paid to the employee directly. Under Sub-section (4) of Section 11, a direction issued by the Tribunal under Sub-section (2) shall be complied with by the management within the specified period, not less than 30 days of the date of receipt by the management. 10.11 We have already held that the disbursal of grant-in-aid or any dispute in regard to a breach of a condition of aid by the management constitutes a lis between the management and the Government. We, however, wish to clarify that in an appropriate case where the non-approval of the services of a teacher by the Education Department affects a right of the teacher such as in regard to the disbursal of the pensionary benefits or a declaration of a teacher as a surplus employee, the right to challenge an order of non-approval in appropriate proceedings would be preserved. 11. The determination of seniority by the Education Officer under Rule 12: 11.1 Rule 12 provides thus: 12. Seniority List - Every Management shall prepare and maintain seniority list of the teaching staff including Head Master and Assistant Head Master and nonteaching staff in the School in accordance with the guidelines laid down in Schedule “F”. The seniority list so prepared shall be circulated amongst the members of the staff concerned and their signatures for having received a copy of the list shall be obtained. Any subsequent change made in the seniority list from time to time shall also be brought to the notice of the members of the staff concerned and their signatures for having noted the change shall be obtained. -(2) Objections, if any, to the seniority list or to the changes therein shall be duly taken into consideration by the Management. -(3) Disputes, if any, in the matter of inter se seniority shall be referred to the Education Officer for his decision. One of the issues canvassed before this Court is whether a determination by the Education Officer of a dispute in the matter of inter se seniority is final or whether the correctness of that determination can fall for determination before Page 0102

the Tribunal in an appeal under Section 9. Rule 12 is a part of subordinate legislation. Subordinate legislation cannot override the provisions of legislation made by the competent Legislature. Delegated legislation cannot rise above the source to which it owes its existence. Section 9(1) of the Act is prefaced by a non-obstante provision and the jurisdiction that has been conferred upon the Tribunal is notwithstanding anything contained in any law or contract for the time being in force. The non-obstante clause is wide enough to operate in relation to the Rules inasmuch as the rules constitute law for the time being in force. Moreover, Rule 12 in any event does not confer finality on the decision of the Education Officer. An employee against whom action is taken by the management on the basis of the decision of the Education Officer in the matter of inter se seniority, is entitled to challenge the action of the management, where the action complained of falls within the description set out in Clauses (a) and (b) of Sub-section (1) of Section 9. Hence, if the management, on the basis of the determination by the Education Officer in the matter of inter se seniority, proceeds to supersede an employee while making an appointment to any post by promotion, the act of supersession is subject to an appeal Sub-section (1) of Section 9. The Tribunal while deciding the legality of an order of supersession is entitled to decide as an incidental question, the correctness of a determination made by the Education Officer on a question of seniority. The jurisdiction of the Tribunal under Sub-section (1) of Section 9 comprehends incidental and ancillary matters that would enable the Tribunal to render a full, final and effective adjudication of the matter in controversy. It would be manifestly unjust to require the employee to move two separate forums, the first in a challenge to the determination of the Education Officer under Rule 12 and the second in an action to challenge the consequential order of the management in the appeal under Section 9. Where the management has not taken any consequential action of a description falling in Sub-section (1) of Section 9, the employee is at liberty - since the remedy under Section 9 is not available at that stage - to take recourse to the remedies available in law to challenge the decision of the Education Officer. The employee may seek to do so at that stage before consequential action is taken by the management. However, where action of the nature described in Clauses (a) and (b) of Sub-section (1) of Section 9 is taken by the management, the employee who is aggrieved has recourse to the remedy of an appeal before the Tribunal and the Tribunal is entitled to decide upon the correctness of the determination made by the Education Officer under Rule 12 on the basis of which the management has taken consequential action. A decision on the correctness of the determination of the Education Officer under Rule 12 falls for adjudication before the Tribunal as an incidental question. 11.2 The position in law which we have enunciated finds acceptance in a judgment of the Division Bench of this Court in Umesh Balkishna Vispute v. State of Maharashtra (supra). A Learned Single Judge of this Court had held in Lodghar's case (supra) that the Tribunal could not go into the question of inter se seniority between teachers since it was for the Education Officer to Page 0103 decide that issue under Rule 12. The Division Bench overruled the correctness of the view taken by the Learned Single Judge and held that

the issue was settled by two unreported judgments of Division Benches of this Court at the Nagpur Bench. We affirm the correctness of the view taken by the Division Bench in Vispute (supra). The decisions of the Division Bench in Saramma Verghese (supra) and Atmaram Raghunath Pashte (supra) do not lay down a proposition to the contrary. The judgment in Saramma Verghese holds that when he decides the issue of seniority under Rule 12, the Education Officer acts as a quasi judicial authority and his determination would be subject to the supervisory writ jurisdiction of this Court. In Pashte's case, the Division Bench noted that in pursuance of a determination of seniority by the Education Officer of the Zilla Parishad, consequential action had not been taken by the management at that stage. The Division Bench clarified that it was true that if in pursuance of the order of the Education Officer, consequential action was taken by the management and if the employee was aggrieved by that action, he could invoke the provisions of Section 9 of the Act and file an appeal. That however, did not mean that the action of the Education Officer could not be challenged in a petition under Article 226 of the Constitution. Pashte's case therefore, involves a situation where consequential action was yet to be taken by the management. Since in Pashte's case no consequential action had been taken by the management, the scope of the appellate remedy in a case where consequential action is taken did not fall for consideration. That issue has been decided in Vispute. The determination of inter se seniority by the Education Officer under Rule 12 is not final. An employee aggrieved by the determination under Rule 12 is at liberty to challenge that determination even before the management takes consequential action by seeking recourse to the writ jurisdiction, as was the case before the Court in Pashte. However, once consequential action falling under Clauses (a) and (b) of Sub-section (1) of Section 9 is taken by the management on the basis of the determination, an appeal lies under Section 9 and while exercising its jurisdiction on an appeal, the Tribunal can as an incidental issue, decide the correctness of the determination of inter se seniority. 12. Enforcement of Orders of the Tribunal: 12.1 The submission that has been urged on behalf of the employee is that the MEPS Act, 1977 does not create a valid and effective procedure for the enforcement of orders of the Tribunal. Section 13 of the Act contains penal provisions where the management has failed without any reasonable excuse to comply with the order of the Tribunal. That apart, the question as to whether an order of the Tribunal is capable of being executed as a decree of a Civil Court has been considered in a judgment of a Learned Single Judge of this Court (D.K. Deshmukh, J.) in Mohammad Salam Anamul Haque v. S.A. Azmi 2001(1) Mh. L.J. 249. Sub-section (1) of Section 10 of the Act provides that for the purposes of admission hearing and disposal of appeals, the Tribunal shall have the same powers as are vested in an appellate Court under the Code of Civil Procedure, 1908, and shall also have the power to stay the operation of Page 0104 any order against which an appeal is made on such conditions as it may think fit to impose. Under Section 12 of the Act, the decision of the Tribunal is to be final and binding on the employee and the management and no suit, appeal or other legal proceedings shall lie in any Court in respect of a matter decided by the Tribunal. A Division Bench of this Court

held in Chandrakant Ganpat Shelar v. Sophy Keely, Hill Garange High School Mh. L.J. 1012, that the Tribunal constituted under the Act is a Court within the meaning of the Contempt of Courts Act, 1971. Section 36 of the Code of Civil Procedure, 1908, lays down that the provisions of the Code relating to the execution of decrees shall so far as they are applicable, be deemed to apply to the execution of orders. The term "order" has been defined by Section 2(14) of the Code of Civil Procedure, 1908, to mean the formal expression of any decision of a Civil Court which is not a decree. In holding that the Tribunal constituted under the Act can be termed as a "Court", the Learned Single Judge placed reliance on the judgment of the Supreme Court in Brajnanandan Sinha v. Jyoti Narain AIR 1956 SC 66 where it was observed as follows: it is clear, therefore, that in order to constitute a Court in the strict sense of the term, an essential condition is that the Court should have, apart from having some of the trappings of a judicial tribunal, power to give a decision or a definitive judgment which has finality and authoritativeness which are the essential tests of a judicial pronouncement. The learned single judge held that the Tribunal is vested with the power to give a definitive judgment to which finality has been attached by the Act. The Tribunal has all the trappings of a Court. Under Section 10, the Tribunal has all the powers of an Appellate Court under the Code of Civil Procedure, 1908 for the purpose of admission hearing and disposal of appeals. The powers of an Appellate Court under Section 107 of the CPC are as follows: (1) Subject to such conditions and limitations as may be prescribed, an Appellate Court shall have power - -(a) to determine a case finally; -(b) to remand a case; -(c) to frame issues and refer them for trial; -(d) to take additional evidence or to require such evidence to be taken. -(2) Subject as aforesaid, the Appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by the Code on Courts of original jurisdiction in respect of suits instituted therein. The learned single judge, therefore, held that an Appellate Court is conferred with the same powers and duties as are conferred and imposed by the Code on Courts of original jurisdiction in respect of suits instituted therein. The Tribunal, the learned Single Judge held, is a Court and an order passed by the Tribunal would satisfy the description of that expression in Section 2(14) of the CPC. The learned single Judge held as follows: Page 0105 Therefore, when the School Tribunal makes an order for reinstatement and for payment of back wages, the Appellant in whose favour such an order is made can definitely approach the School Tribunal, which made the order for execution of that order in the same manner in which the decree under the provisions of the Civil Procedure Code is to be executed. In such situation either the tribunal may itself execute the decree or it may transfer the decree for execution to another Court in accordance with the provisions contained in the Civil Procedure Code. It is thus clear to my mind that an order made by the School Tribunal is an order which is executable under the provisions of the Civil Procedure Code. We affirm the correctness of these observations. Conclusion: For the reasons which we have indicated in the body of the judgment, we, therefore, hold as follows: -(i) In respect of those matters upon which an appeal lies to the Tribunal under Clauses (a) and (b) of

Sub-section (1) of Section 9 of the MEPS Act, 1977, the jurisdiction of the Civil Court is impliedly barred; -(ii) The decisions of the Learned Single Judges of this Court in Janata Janardan Shikshan Sanstha v. Dr. Vasant P. Satpute, and Rasta Peth Education Society v. Pethkar Udhao Bhimashankar, (supra) which hold that an employee aggrieved by the action of the management has a choice to elect one of two forums - an appeal under the Act or a Civil Suit do not, with respect, reflect the correct position in law and are overruled; -(iii) Neither the MEPS Act, 1977, nor the Rules framed thereunder mandate the grant of approval by the Education Officer as 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; -(iv) The judgments of the Division Benches of this Court in Anna Manikrao Pethe v. Presiding Officer, and Shailaja Ashokrao Walse v. State of Maharashtra (supra) to the extent that they hold that an appeal is not maintainable before the Tribunal at the behest of an employee whose appointment has not been approved do not reflect the correct position in law and are overruled; -(v) A decision of the Education Officer on the issue of inter se seniority under Rule 12 of the MEPS Rules is not final. Where action is taken by the management against an employee on the basis of such a determination and where the action taken falls within the description contained in Clauses (a) and (b) of Sub-section (1) of Section 9, an appeal before the School Tribunal for challenging the action of the management would be maintainable. The Tribunal would have the jurisdiction, while deciding the lawfulness of the action of the management to adjudicate upon the correctness of the determination of the Education Officer under Page 0106 Rule 12 as an incidental question. Where no consequential action has been taken by the management, on the basis of the determination of the Education Officer, it would be open to the employee concerned, to seek recourse to his remedies against the decision under Rule 12 in accordance with law; -(vi) The Legislature having provided for a remedy before the Tribunal only in respect of the 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 an appeal before the Tribunal is not available and hence, the jurisdiction of the Civil Court is not barred. -(vii) We clarify that in the present reference, we have dealt with the question of the maintainability of a suit in the Civil Court in respect of matters which fall within the purview of Section 9 of the MEPS Act, 1977. The question as to whether the remedy under industrial legislation would be available to a member of the nonteaching staff has not fallen for consideration in these proceedings since that forms a subject matter of a separate reference to the Full Bench. The reference to the Full Bench is answered accordingly. The Second Appeal shall now be placed before the appropriate Bench by the Registry for disposal.