

The Maharashtra Employees Of Private Schools (Conditions Of Service) Regulations Act, 1977

MAHARASHTRA

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The Maharashtra Employees Of Private Schools (Conditions Of Service) Regulations Act, 1977[20th March, 1978].Maharashtra Act No. III of 1978An Act to regulate recruitment and conditions of service of employees in certain private schools.WHEREAS, it is expedient to regulate the recruitment and conditions of service of employees in certain private schools in the State, with a view to providing such employees security and stability of service to enable them to discharge their duties towards the pupils and their guardians in particular, and the institution and the society in general, effectively and efficiently;AND WHEREAS, it is further expedient in the public interest to lay down the duties and functions of such employees with a view to ensuring that they become accountable to the Management and contribute their mite for improving the standard of education;AND WHEREAS, it is also necessary to make certain supplemental, incidental and consequential provisions;It is hereby enacted in the Twenty Eighth Year of the Republic of India as follows: —

1. Short title, extent and commencement. —

(1)This Act may be called the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977.(2)It extends to the whole of the State of Maharashtra.(3)It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.

2. Definitions. —

In this Act, unless the context otherwise requires, —(1)“appointed date” means the date on which this Act comes into force;(2)“coaching class” means any institution, other than a recognized school conducted by any person or body of persons, by whatever name called and established and

administered with the object of preparing its students for any certificate or diploma or degree or any college or school course;(3)“college” means a college conducted by, or affiliated to, a University established by law in the State;(4)“Department” means the Education Department of the Government of Maharashtra;(5)“Deputy Director” means the Deputy Director of Education, the Deputy Director of Technical Education, the Deputy Director of Vocational Education and Training or, as the case may be, the Deputy Director of Art, appointed as such by the Government for the respective region or area;(6)“Director” means the Director of Education or the Director of Technical Education or the Director of Vocational Education and Training or the Director of Art as the case may be, appointed as such by the State Government;(6A)“Divisional Board” means the Divisional Board established under the Maharashtra Secondary and Higher Secondary Education Boards Act, 1965 (Mah. XLI of 1965);(7)“employee” means any member of the teaching and non-teaching staff of a recognised school and includes Assistant Teacher (Probationary);(8)“existing private school” means a recognised private school which is in existence on the appointed date;(9)“Head of a school” or “Head” means the person, by whatever name called, in charge of the academic and administrative duties and functions of a school conducted by any Management and recognised or deemed to be recognised under this Act, and includes a principal, vice-principal, headmaster, head-mistress, assistant head-master, assistant head-mistress or superintendent thereof;(10)“Junior College of Education” means a school imparting teacher education to person for being appointed as teachers and Assistant Teacher (Probationary) in pre-school centres or primary schools;(11)“local authority” means a Zilla Parishad, a Municipal Corporation, or a Municipal Council, as the case may be;(12)“Management” in relation to a school, means, —(a)in the case of a school administered by the State Government, the Department;(b)in the case of a school administered by a local authority, that local authority; and(c)in any other case, the person or body of persons, whether incorporated or not and by whatever name called, administering such school;(13)“minority school” means a school established and administered by a minority having the right to do so under clause (1) of article 30 of the Constitution of India;(14)“Municipal Corporation” means a Municipal Corporation established or constituted under the Mumbai Municipal Corporation Act (Bom. III of 1888), or the Bombay Provincial Municipal Corporations Act, 1949, or the City of Nagpur Corporation Act, 1948 (Bom. LIX of 1949 and Berar II of 1950);(15)“Municipal Council” means a Municipal Council established or constituted under the Maharashtra Councils Act, 1965 (Mah. XL of 1965);(16)“pre-school centre” means an institution, by whatever name called, which provides education for children who have attained the age of three years but have not attained the age of six years;(17)“prescribed” means prescribed by rules;(18)“primary education” means education imparted in such subjects and up to such standards as may be determined by the State Government, from time to time, located either in a primary or a secondary school;(19)“primary school” means a recognised school, or a part of such school, in which primary education is imparted;(20)“private school” means a recognised school established or administered by a Management, other than the Government or a local authority;(21)“recognised” means recognised by the Director, the Divisional Board or the State Board, or by any officer authorised by him or by any of such Boards;(23)“rules” means the rules made by the State Government under this Act;(24)“Assistant Teacher (Probationary)” means a member of base teaching cadre appointed on honorarium and subject to such terms and conditions as specified in the Government Resolution published in the Maharashtra Government Gazette, Extraordinary, No. 12, Part I- Central Sub-Section, dated the 15th February 2007, for eventual appointment as a teacher;(25)“State Board” means, —(a)the Maharashtra State Board of Secondary

and Higher Secondary Education established under the Maharashtra Secondary and Higher Secondary Education Boards Act, 1965 (Mah. XLI of 1965);(b)the Board of Technical Examinations, Maharashtra State;(c)the Maharashtra State Board of Vocational Examinations; or(d)the Art Examinations Committee;(26)“teacher” means a member of the teaching staff, and includes the Head of a school;(27)“Zilla Parishad” means a Zilla Parishad established or constituted under the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 (Mah. V of 1962).

3. Application of Act. —

(1)The provisions of this Act shall apply to all private schools in the State of Maharashtra, whether receiving any grant-in-aid from the State Government or not.(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 services 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, post-retirement 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 post-retirement 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, post-retirement 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 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 otherwise terminated or he 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.

4A. Director's power to hold or order holding of inquiries. —

(1) Notwithstanding anything contained in sub-section (6) of section 4 or any other provisions of this Act or the rules made thereunder, where in any case of alleged misconduct or misbehaviour of a serious nature or moral turpitude of an employee, —(a) an inquiry is held by an Inquiry Committee into such allegations and the Director is of the opinion that the Inquiry Committee has unreasonably exonerated the employee, he may call for and examine the record and proceeding of such inquiry for the purpose of satisfying himself as to the correctness of the decision on the basis of its findings, and may either annul, revise, modify or confirm the said decision or may direct the Inquiry Committee to make further inquiry for taking such additional evidence as they may think necessary or he may himself take or authorise any other officer not below the rank of the Education Officer to take such additional evidence ; and while making an order under this clause, if the Director is satisfied that the charges of serious misconduct, misbehaviour, or as the case may be, moral turpitude have been substantially proved, he shall direct the Management to impose on such employee any of the penalties as specified in sub-section (4): Provided that, the Director shall not record any order under this subsection without giving the party affected thereby and the Management an opportunity of being heard. (b) the Management has either neglected or refused to hold an inquiry against such employee in accordance with the provisions of this Act and the rules made in that behalf, the Director shall direct the Management to initiate action within thirty days from the receipt of such direction, for holding inquiry into the allegation against such employee and to complete the same in accordance with such provisions and rules. (2) Where there is a failure on the part of the Management to initiate action as directed under clause (b) of sub-section (1) to hold an inquiry and to complete the same within the period prescribed under the rules, the Director may himself hold, or direct any officer not below the rank of Education Officer to hold, such inquiry. (3) While holding an inquiry the Director or the officer authorised by him shall follow the same procedure as is followed by the Inquiry Committee under the rules made under this Act as if the Director or the officer so authorised were an Inquiry Committee for the purpose of holding such inquiry. (4) On holding such inquiry by the Director himself or on receipt of the report of the inquiry officer, if the Director is satisfied that the charges of serious misconduct, misbehaviour or, as the case may be, moral turpitude have been substantially proved, he shall, by an order in writing, direct the Management that a penalty of dismissal, removal from service, termination of service, or as the case may be, reduction in rank as he may, in the circumstances of the case deem fit, be imposed on the employee concerned: Provided that, no such order shall be passed by the Director unless the employee and the Management concerned are given a reasonable opportunity of showing cause against the proposed order. (5) The order of the Director under clause (a) of sub-section (1) or sub-section (4) shall be binding on both the Management and the employee and the same shall be complied with by the Management within such period as may be specified by the Director.

5. Certain obligations of Management of private schools. —

(1) The Management shall, as soon as possible, 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: Provided that, unless such vacancy is to be filled in by promotion, the Management shall, before proceeding to fill such vacancy, ascertain from the Educational Inspector, Greater Bombay,

2[the Education Officer, Zilla Parishad or, as the case may be, the Director or the officer designated by the Director in respect of schools imparting technical, vocational, art or special education, whether there is any suitable person available on the list of surplus persons maintained by him, for absorption in other schools and in the event of such person being available, the Management shall appoint that person in such vacancy.(2)Every person appointed to fill a permanent vacancy except Assistant Teacher (Probationary) shall be on probation for a period of two years. Subject to the provisions of sub-sections (3) and (4), he shall, on completion of this probation period of two years, be deemed to have been confirmed:Provided that, every person appointed as Assistant Teacher (Probationary) shall be on probation for a period of three years.(2A)Subject to the provisions of sub-sections (3) and (4), Assistant Teacher (Probationary) shall, on completion of the probation period of three years, be deemed to have been appointed and confirmed as a teacher.(3)If in the opinion of the Management, the work or behaviour of any probationer, during the period of his probation, is not satisfactory, the Management may terminate his services at any time during the said period after giving him one month's notice or salary or honorarium of one month in lieu of notice.(4)If the services of any probationer are terminated under sub-section (3) and he is reappointed by the Management in the same school or any other school belonging to it within a period of one year from the date on which his services were terminated, then the period of probation undergone by him previously shall be taken into consideration in calculating the required period of probation for the purposes of sub-section (2).(4A)Nothing in sub-section (2), (3) or (4) shall apply to a person appointed to fill a permanent vacancy by promotion or by absorption as provided under the proviso to sub-section (1).(5)The Management may fill in every temporary vacancy by appointing a person duly qualified to fill such vacancy. The order of appointment shall be drawn up in the form prescribed in that behalf, and shall state the period of appointment of such person.

6. Obligations of Head of private school. —

(1)If—(a)the Head of a private school or any person duly authorised by him in that behalf,(i)makes unauthorised alterations in the date of birth of any student recorded in the General Register of the school or gives a school leaving certificate with the date of birth different from that recorded in the General Register; or(ii)admits any student from an unrecognised educational institution without a written order of the Deputy Director; or(iii)gives accelerated promotion to, or detains any student, either of his own accord or at the instance of the Management, in contravention of the rules made in that behalf; or(b)the employee of a private school is dismissed or removed or his services are otherwise terminated on account of misconduct, gross negligence of duties, moral turpitude, mis-appropriation of school money or material, negligence or misconduct or both in connection with the examinations or creation of communal disharmony;then the Director may, after making such enquiries as he thinks fit, by an order in writing debar the Head or such authorised person 3[or such employee] from holding that post for a period of five years from the date of the order. If after the said period of five years, the Head or such authorised person 3[or such employee] is found to have committed any of the acts aforesaid again, then he may, after giving him a reasonable opportunity of being heard, be permanently debarred by the Director from holding such post in any private school.(2)After making any order under sub-section (1), the Director shall cause the name of such Head or authorised person or employee to be entered in a Black List Register maintained for the purpose, and communicate the name of the Head or such person or employee to all the

managements of private schools in the State.

7. Procedure for resignation by employees of private schools. —

If any employee intends to resign his post in any private school, at any time after the appointed date, he shall draw up a letter of resignation in duplicate and sign both the copies of that letter and put the date thereon. He may then forward one copy to the Management by registered post and keep the other copy with him.

8. Constitution of School Tribunals. —

(1)The State Government shall, by notification in the Official Gazette, constitute one or more Tribunals to be called “School Tribunals” and define the jurisdiction of each Tribunal in such notification.(2)A Tribunal shall consist of one person only to be appointed by the State Government.(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.(4)The appointment of a person as a Presiding Officer of a Tribunal may be on a full-time or a part-time basis, and may be for such period or periods, but not exceeding five years in the aggregate, as the State Government may, from time to time, in each case decide.(5)The remuneration and other conditions of service of the Presiding Officer shall be determined by the State Government.(6)The State Government shall make available to the Tribunal such ministerial staff as may be necessary for the discharge of its functions under this Act.(7)All expenditure on account of the remuneration, pension or provident fund contribution, leave allowance and other allowances and facilities, which may be admissible to the Presiding Officer and the staff placed at his disposal, shall be met from the Consolidated Fund of the State.(8)If any vacancy, other than a temporary vacancy occurs, in the office of the Presiding Officer of a Tribunal, the State Government shall, as soon as possible, appoint another qualified person to fill the vacancy. Any proceedings pending before the former Presiding Officer may be continued and disposed of by his successor from the stage at which they were, when the vacancy occurred.

9. Right of appeal to Tribunal to employees of private schools. —

(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 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 Tribunal 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.(2)Such appeal shall be made by the employee to the Tribunal, within thirty days from the date of receipt by him of the order of dismissal, removal, otherwise termination of service or reduction in rank, as the case may be:Provided that, where such order was made before the appointed date, such appeal may be made within sixty days from the said date.(3)Notwithstanding anything contained in sub-section (2), the Tribunal may entertain an appeal made to it after the expiry of the said period of thirty or sixty days as the case may be, if it is satisfied that the appellant has sufficient cause for not preferring the appeal within that period.(4)Every appeal shall be accompanied by a fee of five hundred rupees, which shall not be refunded and shall be credited to the Consolidated Fund of the State.

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 (V of 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.

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 no 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 lower post as it may specify;(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 employee any employments 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.

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.

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 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 judgement 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 judgement 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.Explanation: —For the purposes of this section, “society” means a society registered under the Societies Registration Act, 1860, (XXI of 1860) or a public trust registered

under the Maharashtra Public Trusts Act (XXIX of 1950) or any other body corporate, and includes an association or body of persons, by whatever name called, under whose management one or more private schools are conducted.

14. Legal practitioners excluded from appearance. —

Notwithstanding anything contained in any law for the time being in force, a legal practitioner shall not be entitled to appear on behalf of any party in any proceedings before the Director or the Tribunal except with the special permission of the Director or the Tribunal: Provided that, the appellant shall, if he so desires, be allowed to represent himself before the Director or the Tribunal through any other person of his choice who shall be an employee in the same or any other private school. Such representative shall obtain permission to do so from the Management of his school.

15. Transfer of pending appeals to Tribunal. —

All appeals of employees or, as the case may be, of the Managements of private schools relating to the matters specified in section 9, which may be pending before the Department or the Director or an Officer sub-ordinate to him, as the case may be, in accordance with the provisions of the Secondary Schools Code, shall be transferred to the Tribunal. The Tribunal shall hear and dispose of every such appeal, as if it were made under section 9, provided that the prescribed fee of Rs. 50 is paid by the employee or the Management, as the case may be, within one month of the receipt of a notice given to him by the Tribunal for that purpose: Provided that any such appeal decided by the Department, or the Director, or an officer sub-ordinate to him, during the period commencing on the date of coming into force of this Act and ending on the date of commencement of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation (Amendment) Act, 1987 (Mah. XXX of 1987), in accordance with the directions of the High Court of Bombay, shall be deemed to have been validly decided, as if the Department or the officer sub-ordinate to him had, notwithstanding anything contained in this Act, the jurisdiction to decide the same. Explanation. — For the purpose of this section, — (a) appeals of the employees or, as the case may be, of the Management relating to the matters specified in clause (a) of sub-section (1) of section 9; and (b) appeals of employees or, as the case may be, of the Management relating to the matters specified in clause (d) of sub-section (1) of section 9, means, respectively, the appeals pending on the appointed date and on the date of commencement of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation (Amendment) Act, 1987 (Mah. XXX of 1987), before the Department or the Director or an officer sub-ordinate to him, as the case may be.

16. Rules. —

(1) The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act. (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of 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.(2A)The power to make rules under clauses (a) to (d) conferred by subsection (2) shall include the power to give retrospective effect to the rules or any of them but no retrospective effect shall be given to any rule so as to prejudicially affect the interests of any person to whom such rule may be applicable.(3)All rules made under this Act shall be subject to the condition of previous publication.(4)Every rule made under this Act shall be laid, as soon as may be, after it is made before, each House of the State Legislature, while it is in session for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, and notify such decision in the Official Gazette, the rule shall from the date of publication of such notification have effect, only in such modified form or be of no effect as the case may be ; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done or omitted to be done under that rule.