

STATE OF ODISHA & ORS. ETC.ETC.

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v.

SULEKH CHANDRA PRADHAN ETC.ETC.

(Civil Appeal Nos. 3036-3064 of 2022)

APRIL 20, 2022

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[L. NAGESWARA RAO AND B. R. GAVAI, JJ.]

Odisha Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974 – rr.5, 6 – Tribunal allowed the Original Applications filed by the respondents, thereby setting aside their termination and allowing them to continue as Government servant as third teacher/ Assistant Teacher in Middle English Schools (M.E. Schools) as regular teacher, same relief was granted to 137 Hindi Teachers also – Writ petitions filed by the appellants, dismissed – On appeal, held: Perusal of the approval order of the Government of Orissa, Education and Youth Service Department, would reveal that for each M.E. School, only two posts, i.e., one post of a Trained Graduate Headmaster and one post of a Trained Matric Teacher, have been sanctioned – The order clearly provides that no other post of teaching and non-teaching staff would be permitted – It is not in dispute that the appointment of all the applicants/respondents/ teachers have been made directly by the respective Management without following the procedure as prescribed under the Rules/ Statute – Appointments made in contravention of the statutory provisions are void ab initio – Tribunal erred in allowing the Original Applications of the applicants/teachers – Similarly, the High Court also erred in dismissing the petitions filed by the appellants – Impugned judgment of the High Court and the orders of the Tribunal are set aside – Constitution of India – Article 136 – Service Law.

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Allowing the appeals, the Court

HELD: 1.1 Perusal of the approval order dated 12th September, 1980 of the Government of Orissa, Education and Youth Service Department, would reveal that for each M.E. School, only two posts, i.e., one post of a Trained Graduate Headmaster and one post of a Trained Matric Teacher, have been sanctioned. The order clearly provides that no other post of

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- A teaching and non-teaching staff would be permitted. It is not in dispute that the appointment of all the applicants/respondents/teachers have been made directly by the respective Management without following the procedure as prescribed under the Rules/Statute. It is a trite law that the appointments made in contravention of the statutory provisions are *void ab initio*. The
- B contention raised that since the applicants/teachers were appointed on posts which were not on grant-in-aid basis, the said Rules are not applicable is not accepted. The said Rules would clearly show that they are applicable to Aided Educational Institution. Undisputedly, the institutions in which the applicants/
- C teachers were appointed, were recognized as Aided M.E. Schools vide G.O. dated 12th September, 1980. It is also not in dispute that the appointments so made were subsequent to the schools being recognized as Aided Schools. As such, the contention in that regard deserves to be rejected. [Paras 31-33][356-E-G; 357-B-C]
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- 1.2 The Tribunal, while delivering the judgment and order dated 18th May, 2017 and 30th January, 2018, has failed to take into consideration the earlier orders dated 25th June, 2013 and 23rd September, 2013 delivered by the same Tribunal. In the said orders of 2013, the Tribunal had elaborately considered the
- E provisions of the said Rules and found no merit in the contentions raised on behalf of the applicants therein. The orders passed by the Tribunal ignoring its earlier orders, which were passed elaborately considering the scheme of the said Rules, are totally contrary to the well-established norms of judicial propriety. The
- F situation becomes graver, inasmuch as, the Tribunal has allowed O.A. No.2270 OF 2015 by its order dated 18th May, 2017 filed by Sri Antaryami Bal, whose earlier application being O.A. No. 4029(2) of 1996 with regard to the same relief was rejected by the Tribunal vide its earlier order dated 12th April, 2012. The orders passed by the Tribunal are, therefore, totally unsustainable.
- G Not only this, the Tribunal as well as the High Court has failed to take into consideration the order passed by this Court on 2nd December, 1996 in Civil Appeal No. 15712 of 1996. The impugned order passed by the High Court depicts total non-application of mind. Whereas the cause title would itself show that a Writ
- H Petition (Civil) No.6557 of 2018 is disposed of by the impugned

judgment, the High Court observed that the order dated 18th May, 2017, passed by the Tribunal in O.A. No.2266 of 2015, has not been challenged by the State. Whereas the teachers have hardly worked for four years and a substantial part thereof on account of interim orders passed by the High Court, the High Court goes on to observe that the teachers have worked for a period of more than 20 years. No reasons, leave aside sound reasons, are reflected in the impugned order while dismissing the writ petitions filed by the State. [Paras 34, 35][357-D-G; 358-A-B]

1.3 That leaves the Court with the submission that since the view taken by the Tribunal has been affirmed by the High Court and the Special Leave Petition challenging the same has been dismissed, the view of the Tribunal has become final. A mere dismissal of the Special Leave Petition would not mean that the view of the High Court has been approved by this Court. As such, the contention in that regard is rejected. The Tribunal has erred in allowing the Original Applications of the applicants/teachers. Similarly, the High Court has also erred in dismissing the petitions filed by the appellants. The impugned judgment and order of the Division Bench of the High Court dated 20th December, 2018 passed in a batch of writ petitions and the judgments and orders dated 18th May, 2017 and 30th January, 2018 of the Tribunal passed in a batch of Original Applications are quashed and set aside. The Original Applications filed by the respondents/applicants before the Tribunal are dismissed. [Paras 36-39][358-C; 359-D-F]

Ayurvidya Prasarak Mandal and Another v. Geeta Bhaskar Pendse (Mrs) and Others (1991) 3 SCC 246 : [1991] 2 SCR 282; J & K Public Service Commission and Others v. Dr. Narinder Mohan and Others (1994) 2 SCC 630 : [1993] 3 Suppl. SCR 900; Official Liquidator v. Dayanand and Others (2008) 10 SCC 1 : [2008] 15 SCR 331; Union of India and another v. Raghuwar Pal Singh (2018) 15 SCC 463 : [2018] 4 SCR 1012; Kunhayammed and Others v. State of Kerala and Another (1997) 2 SCC 635 : [1996] 9 Suppl. SCR 434 – relied on.

A	<u>Case Law Reference</u>		
	[1991] 2 SCR 282	relied on	Para 32
	[1993] 3 Suppl. SCR 900	relied on	Para 32
	[2008] 15 SCR 331	relied on	Para 32
B	[2018] 4 SCR 1012	relied on	Para 32
	[1996] 9 Suppl. SCR 434	relied on	Para 36

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 3036-3064 of 2022.

C From the Judgment and Order dated 20.12.2018 of the High Court of Orissa at Cuttack in W.P. (C) Nos.6557, 10792, 8037, 8040, 9163, 10844, 10876, 10880, 10970, 11394, 11399, 11400, 11401, 11546, 11554, 11556, 11796, 11798, 12520, 13672, 13848, 13850, 13999, 14107, 14108, 14109, 14448, 14449 and 14450 of 2018.

D Chander Uday Singh, Sr. Adv., Shibashish Misra, Amjid Maqbool, Advs. for the Appellants.

R. Balasubramanian, Sr. Adv., Gaurav Agrawal, Javedur Rahman, Pabitra Kumar Biswal, Shivendra Singh, Hitendra Nath Rath, Advs. for the Respondents.

E The Judgment of the Court was delivered by

B. R. GAVAI, J.

1. Leave granted.

F 2. The appellants – State of Odisha and others have approached this Court, being aggrieved by the judgment and order dated 20th December, 2018, delivered by the Division Bench of the High Court of Orissa at Cuttack in a batch of writ petitions being Writ Petition (Civil) No. 6557 of 2018 along with connected matters, thereby dismissing the said writ petitions filed by the appellants – State of Odisha and others, challenging the judgments and orders delivered by the Odisha Administrative Tribunal (hereinafter referred to as “the Tribunal”), Bhubaneswar Bench, Bhubaneswar/Cuttack Bench, Cuttack dated 18th May, 2017 in O.A. No. 2266 of 2015 along with connected matters and 30th January, 2018 in O.A. No.3420 (C) of 2015 along with connected matters.

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3. Vide order dated 18th May, 2017, delivered in O.A. No.2266 of 2015 along with connected matters, the Tribunal, Bhubaneswar Bench had allowed the Original Applications filed by the applicants therein (respondents herein), thereby setting aside the termination of the applicants (respondents herein) and directing/allowing them to continue as Government servant as third teacher/Assistant Teacher in Middle English Schools (hereinafter referred to as “M.E. Schools”) with effect from 1st April, 2011, as regular teacher. Vide order dated 30th January, 2018, the Tribunal, Cuttack Bench followed its earlier order dated 18th May, 2017 and granted the same relief to 137 Hindi Teachers.

4. The parties are referred herein as they are referred to in the Original Applications.

5. The facts giving rise to the present appeals are as under:

6. All the applicants joined the Aided M.E. School as Hindi Teachers, in or around 1988-89. The applicant-Sulekh Chandra Pradhan (respondent No.1 herein) in the lead case before the Tribunal, Bhubaneswar Bench, i.e., O.A. No.2266 of 2015, was appointed on 21st June, 1988 and joined on 23rd June, 1988, as Hindi Teacher at Nrusingha Jena M.E. School, Naginipur in District Kendrapada. The appointment of the said applicant was made by the Managing Committee of the said School.

7. On 12th May, 1992, the Government of Orissa, Education Department issued a resolution, thereby taking over all M.E. Schools situated in the State of Odisha with effect from 1st April, 1991. Though the Government took over all the teachers including non-teaching staff of the M.E. School as Government servants, Hindi Teachers were not taken over as Government servants and therefore, the services of the applicants were automatically terminated. Aggrieved thereby, on 2nd July, 1993, Sulekh Chandra Pradhan (respondent No.1 herein), approached the High Court of Orissa at Cuttack by way of Writ Petition being OJC No. 3042 of 1993, thereby raising a grievance that the benefits extended to Hindi Teachers in terms of the letter of the Deputy Director, Sanskrit, Hindi and Special Education (hereinafter referred to as “the Deputy Director”) dated 1st May, 1992 were not being extended to him. It was asserted that though he possessed the requisite qualification, he was not being absorbed against the third teacher post in the M.E. School where he was earlier working. The Division Bench of the High Court, vide

A judgment and order dated 2nd July, 1993, disposed of the said writ petition by directing the Director of Elementary Education, Orissa (hereinafter referred to as “the Director”), to look into the grievances of the petitioner therein (i.e. Sulekh Chandra Pradhan) within four months from the date of receipt of the order.

B 8. On 7th January, 1994, the Government of Orissa issued a clarification that the letter dated 1st May, 1992 of the Deputy Director addressed to all Inspectors of Schools/all District Inspector of Schools, was applicable only to the teachers, who were appointed against sanctioned posts and were drawing their salaries from the Government fund under Plan and non-plan scheme. By the said communication dated
C 1st May, 1992, the Deputy Director had clarified that Hindi being a non-examinable subject in M.E. Schools, there was no need to allow the existing Hindi Teachers in M.E. Schools to continue further.

9. It appears that in pursuance to the orders of the High Court, the Government of Orissa addressed a letter dated 29th September, 1995
D to the Director, thereby informing that the Government had decided to adjust such Hindi Teachers appointed by the Managing Committee within the yardstick in UP (ME) Schools as Assistant Teachers in the taken over M.E. Schools either in vacant posts of Assistant Teacher or in the post of Hindi Teacher to be created in such schools or in other schools in
E relaxation of the qualifications, prescribed for the third teachers. Vide the said communication dated 29th September, 1995, the Director was asked to ascertain the names of the Hindi Teachers along with their qualification from the concerned District Inspector of Schools. In response to the same, the Director immediately informed the Government that
F since the appointments were made beyond the yardstick and against the provisions of Odisha Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974 (hereinafter referred to as “the said Rules”), the reference to District Inspector of Schools to furnish the names and qualifications of such Hindi Teachers would lead to every possibility for manipulation
G of the office records. It was also pointed out that such an exercise may enable to sponsor names of Hindi Teachers for approval by making back-dated appointments. It was therefore recommended that cases of only such Teachers who had filed the writ application between 12th May, 1992 and 12th May, 1993, i.e., within a year after taking over of the schools should be considered as one time measure.

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10. Vide communication dated 21st May, 1996, the Government of Orissa informed the Director that the Government has decided to adjust 137 Hindi Teachers in M.E. Schools. It appears that vide communication dated 17th June, 1996, the Government of Orissa also informed the Director that while examining the original papers of Hindi Teachers, their Acquaintance Roll should be verified by the District Inspector of Schools. It further appears that vide communication dated 21st August, 1996, the Government of Orissa informed the Director that no action be taken in pursuance to its earlier letters/communications dated 21st May, 1996 and 17th June, 1996, until further orders of the State Government.

11. Ignoring the letter/communication dated 21st August, 1996, the respective District Inspector of Schools issued appointment order dated 27th August, 1996 in favour of the applicant – respondent No. 1 herein. Noticing this, the Directorate of Elementary Education, Orissa, Bhubaneswar addressed a communication/letter dated 1st October, 1996 to the District Inspector of Schools informing that all appointments made by them should be kept in abeyance. It appears that on the basis of the said communication dated 1st October, 1996, the services of the applicants/ Hindi Teachers were discontinued with effect from 4th November, 1996. On 5th September, 1998, the Government of Orissa addressed a communication to the Director, stating therein that the Government has withdrawn its G.O. No.31360 SME dated 29th September, 1995.

12. It is the contention of the State Government that the Joint Secretary to the Government of Orissa, Department of School and Mass Education addressed a communication dated 7th July, 2009 to the Director, stating therein that the Government had decided to adjust the services of 137 Hindi Teachers in M.E. Schools as Assistant Teachers against the vacant posts. Vide another communication dated 2nd February, 2011, the office of the Director informed the District Inspectors of Schools that a committee constituted and headed by them should scrutinize the original papers of Hindi Teachers and acquaintance roll of the incumbents should be verified with reference to the cash book of the School from the date of their joining before the adjustment of such teachers. In pursuance to the aforesaid communication dated 2nd February, 2011, the applicants/ respondents were appointed on 31st March, 2011 as Assistant Teachers.

13. It appears that certain teachers had approached the Tribunal by filing various applications, thereby challenging the order dated 1st October, 1996 and 4th November, 1996, vide which the appointment

A of teachers were kept in abeyance. One of such applications being O.A. No.4029(2) of 1996 came to be rejected by the Tribunal by order dated 12th April, 2012. It appears that one another application being O.A. No.3800 (C) of 2012 was filed by one Nimai Charan Dash, seeking a direction to quash the order dated 21st August, 2012 whereby the representation of the applicant therein to adjust him as a regular teacher came to be rejected. The said application came to be rejected by the Tribunal, Cuttack Bench vide order dated 23rd September, 2013. While rejecting the said O.A. the Tribunal, Cuttack Bench, directed a detailed enquiry to be conducted through the Vigilance Department.

C 14. In the enquiry, it was found that the letter dated 7th July, 2009 of the Government of Orissa addressed to the Director to adjust 137 Hindi Teachers as Assistant Teachers against vacant posts was issued by suppressing its earlier letter dated 5th September, 1998, whereby the letter dated 29th September, 1995 to adjust the Hindi Teachers was withdrawn. The Government of Orissa, therefore, vide communication dated 26th February, 2014, directed the Director to remove 137 Hindi Teachers, who were illegally adjusted by the concerned District Inspector of Schools. Accordingly, the services of the applicants/Teachers came to be terminated with effect from 15th March, 2014.

E 15. The applicants, being aggrieved by their termination approached the High Court by way of Writ Petitions being Writ Petition (Civil) No.6747 of 2014 and other writ petitions. The High Court vide order dated 9th May, 2014, delivered in Writ Petition (Civil) No.6747 of 2014, found that the termination was done without following the principles of natural justice and as such, set aside the same. However, liberty was granted to the State to proceed against the petitioner therein (i.e., Ramesh Kumar Mohanty) by complying with the Rules governing the employment of the petitioner therein and the requirement of the rule of natural justice. The High Court further directed that the services/appointments of such of the teachers would be continued till the decisions were taken by the authorities after remand.

G 16. In pursuance thereof, the applicants/teachers were reinstated on 15th December, 2014. In view of the liberty granted by the High Court, show cause notices were issued to the applicants on 22nd July, 2015. Some of the applicants filed their replies and appeared for personal hearing. Many of them chose not to do so. The services of the applicants came to be terminated with effect from 22nd August, 2015. Being

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aggrieved, a batch of Original Applications came to be filed before the Tribunal. The same came to be allowed by the Tribunal, Bhubaneswar Bench, vide order dated 18th May, 2017, thereby quashing the show cause notices dated 22nd July, 2015 and holding that the applicants were entitled to continue as regular Government servants as third teacher/ Assistant Teacher in M.E. School with effect from 1st April, 2011.

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17. Vide another order dated 30th January, 2018, the Tribunal, Cuttack Bench, followed the abovementioned order dated 18th May, 2017, passed by the Tribunal, Bhubaneswar Bench and granted similar relief to 137 Hindi Teacher.

18. Being aggrieved by the judgments and orders dated 18th May, 2017 and 30th January, 2018 of the Tribunal, the State of Odisha filed writ petitions before the High Court. The same were dismissed by the impugned judgment and order dated 20th December, 2018. Being aggrieved thereby, the present appeals by way of special leave are filed. Vide order dated 20th September, 2019, this Court issued notice and granted stay to the impugned judgment and order.

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19. We have heard Shri Chander Uday Singh, learned Senior Counsel appearing on behalf of the appellants, Shri Gaurav Agrawal, learned counsel appearing on behalf of the respondents/teachers and Shri R. Balasubramanian, learned Senior Counsel appearing on behalf of the Interveners/applicants.

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20. Shri Chander Uday Singh, learned Senior Counsel appearing on behalf of the appellants would submit that the High Court has grossly erred in holding that the State had not challenged the judgment and order dated 18th May, 2017, passed by the Tribunal, Bhubaneswar Bench, in O.A. No.2266 of 2015 and other connected cases. He submitted that, as a matter of fact, Writ Petition (Civil) No.6557 of 2018 was filed challenging the judgment and order dated 18th May, 2017, passed by the Tribunal in O.A. No.2266 of 2015 and other connected cases. He submitted that the High Court has erred in holding that the teachers had discharged service under the State Government for more than two decades. He further submitted that the Division Bench of High Court has erred in holding that the State had meted out discriminatory treatment amongst the teachers. He therefore submits that the judgments and orders passed by the Tribunal as well as the High Court are not sustainable in law and liable to be set aside.

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A 21. Shri Singh further submitted that the appointments made are contrary to Rules 5 and 6 of the said Rules and as such, the appointments made, *de hors* the said Rules, cannot be sustained. He further submitted that the Tribunal, while delivering the judgments and orders dated 18th May, 2017 and 30th January, 2018, has failed to take into consideration the earlier orders of the Tribunal dated 25th June, 2013 and 23rd September, 2013, vide which the Tribunal had rejected similar claims made by the Hindi Teachers. He further submits that, as a matter of fact, Sri Antaryami Bal, whose O.A. (No. 2270 of 2015) has been allowed by the Tribunal vide judgment and order dated 18th May, 2017, was the applicant in O.A. No.4029 (2) of 1996, which was rejected by the Tribunal, Cuttack Bench by a well-reasoned judgment and order dated 12th April, 2012. He therefore submits that the judgments and orders of the Tribunal, which were impugned before the High Court, would also not be sustainable on the ground of judicial propriety.

D 22. On facts, Shri Singh submitted that the applicants/teachers have worked only between 27th August, 1996 and 4th November, 1996; between 31st March, 2011 and 15th March, 2014; and lastly from 15th December, 2014 till 25th August, 2015. The third period was on account of the orders passed by the High Court. He therefore submits that, at the most, the applicants/teachers have worked approximately for a period of four years.

E 23. Shri Gaurav Agrawal, learned counsel, would submit that though the M.E. Schools had a sanction of two posts, i.e., one post of Headmaster and one post of Assistant Teacher; the posts of Hindi Teacher were filled in by the Management on non-grant basis. He submits that the said Rules would be applicable only to the appointments made on grant-in-aid basis and as such, to the post of Headmaster and to the one post of Assistant Teacher. Since the applicants/teachers, who were appointed on a third post, which was on non-grant basis, they would not be governed by the said Rules.

G 24. Shri Agrawal further submits that in pursuance to the order passed by the Division Bench of the High Court in O.J.C. No. 3042 of 1993 dated 2nd July, 1993, the State had framed a policy for absorption of these teachers as a one-time measure. He submits that prior to their absorption, a detailed scrutiny and enquiry was required to be done. He submits that if applicants/teachers were absorbed in pursuance to the policy, which was framed in pursuance to the directions of the High

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Court, the termination would be bad in law. He therefore submits that no interference would be warranted with the judgments and orders passed by the Tribunal and the High Court. A

25. Shri R. Balasubramanian, learned Senior Counsel appearing on behalf of the interveners/applicants would submit that similar matters, i.e., O.A. No. 3420(C) of 2015 and other connected matters have been allowed by the Tribunal vide order dated 30th January, 2018. He submits that the order of the Tribunal was confirmed/affirmed by the High Court vide order dated 11th April, 2018 passed in Writ Petition (Civil) No.21661 of 2017. He submits that the Special Leave Petition (Civil) D. No.40252 of 2018 challenging the same has been rejected by this Court vide order dated 19th July, 2019. He therefore submits that the issue has reached a finality and therefore, it will not be permissible for the State to do away with the services of the Assistant Teachers. He further submits that the applicants/intervenors in the present appeals, who have succeeded before the Tribunal, the High Court, and this Court have not been reinstated. B C D

26. For appreciating the rival submissions, it will be necessary to refer to Rules 5 and 6 of the said Rules, which read thus: D

“5. Procedure of application to the Board and appointment of Staff in aided institutions –

- (1) The Secretary of the Managing Committee or the Governing Body, as the case may be, of an Aided Educational Institution shall, on or before the thirty-first day of August every year apply to the Selection Board with copy of each application to the concerned Inspector of Schools in respect of Schools [Director of Higher Education] in respect of Colleges in such manner as the Selection Board may prescribe for selection of a candidate for appointment in the vacancy or vacancies in teaching post, and the concerned Inspector of Schools and [Director of Higher Education] shall process the applications so received and transmit the same to the Selection Board by thirtieth day of September every year with certificate of genuineness of the vacancy or vacancies along with a statement of the vacancy position in the Educational Institutions within his jurisdiction. E F G
- (2) The Selection Board shall, on receipt of applications and certificates referred to in Sub-rule () recommend a list of H

- A candidates in order of merit strictly according to the number of vacancies, to the concerned Directors who shall thereupon, allot candidates to the concerned institutions strictly in order of merit as per vacancy.
- B (3) Appointment shall be made by the Managing Committee or the Governing Body as the case may be, of the candidates allotted under Sub-rule (2).
- (4) [***]
- C (5) In the extent of non-acceptance of offer of appointment by any candidate, report to that effect shall be sent to the [Director concerned] by the Secretary of the Managing Committee or the Governing Body, as the case may be, and upon receipt of such intimation, the name of the candidate shall be struck off the list. The consequential vacancies shall then be filled up by candidates allotted by the Director concerned from an additional list obtained from the Selection Board from the list of persons in the waiting list with it.
- D (6) If instance of default in the appointment of candidates allotted by the Director, come to his notice, he shall be competent to withhold the individual teacher's cost of the grant-in-aid to be paid to the institution concerned and to take steps to supersede the Managing Committee or the Governing Body, as the case may be, under Section 11 of the Act.
- E (7) Where a vacancy was not foreseen by thirty-first day of August the Secretary of the Managing Committee or the Government Body, as the case may be, shall apply to the Selection Board through the concerned Inspector or the Director, as the case may be, for allotment of candidates whereupon, the Selection Board shall recommend candidates out of the waiting list maintained by it, through the concerned Director.
- F (8) It shall not be necessary to apply to the Selection Board for appointments to vacancies [for a period of six months or till the date of receipt of the list referred to in Sub-rule (2) from the Selection Board whichever is earlier] and all such appointments may be made by the Managing Committee or
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the Government Body, as the case may be, with the prior approval of the Inspector in respect of an Institution other than a College and of the Director in respect of a College. A

[Provided that where it appears to the Inspector or the Director, as the case may be, that the appointment to a vacancy or vacancies in accordance with the provisions of this rule is being circumvented by making appointments in pursuance to this Sub-rule, the Director suo motu or on the receipt of a report from the Inspector as the case may be, shall be competent to proceed against the Managing Committee or the Governing Body under Section 11 of the Act.] B C

- (9) Notwithstanding anything contained in Sub-rule (8), it shall be competent for the Managing Committee or the Governing Bode, as the case may be to extend in terms of appointment beyond six months till the recommendation of the Selection Board is received with the prior approval of Government. D

6. Procedure of selection of candidates –

(1) The Selection Board shall, at such intervals as it deems proper call for applications for various posts in respect of which vacancies are likely to arise in the course of the next one year in such manner as may be determined in the regulation of the Selection Board. E

(2) The Selection Board shall conduct examinations including a viva voce examination of any candidate or all candidates with a view to determine their merit and suitability in the matter appointed in its regulations.” F

27. Perusal of the sub-rule (1) of Rule 5 of the said Rules would show that the Secretary of the Managing Committee or the Governing Body, as the case may be, of an Aided Educational Institution, is required to apply to the Selection Board on or before the thirty-first day of August every year with copy of each application to the concerned Inspector of Schools and Director of Higher Education. The Inspector of Schools and the Director of Higher Education are required to process the applications so received and transmit the same to the Selection Board by thirtieth day of September every year with certificate of genuineness G H

A of the vacancy/vacancies. Perusal of sub-rule (2) of Rule 5 of the said Rules would show that the Selection Board shall recommend a list of candidates in order of merit strictly according to the number of vacancies to the concerned Directors, who shall thereupon allot candidates to the concerned institutions strictly in order of merit as per vacancy.

B 28. Perusal of sub-rule (6) of Rule 5 of the said Rules would reveal that if the Management defaults in making appointment of candidates allotted by the Director, he shall be competent to withhold the individual teacher's cost of the grant-in-aid to be paid to the institution concerned. He is also entitled to take steps to supersede the Managing Committee or the Governing Body, as the case may be. Under sub-rule
C (8) of Rule 5 of the said Rules, the relaxation is granted for filling up the vacancies for a period of six months or till the date of receipt of the list as referred to in sub-rule (2) of Rule 5 of the said Rules. However, the same has to be with the prior approval of the Inspector in respect of an institution other than a College and of the Director in respect of a College.

D 29. Rule 6 of the said Rules prescribes the procedure for selection of candidates.

E 30. It could thus be clearly seen that a detailed selection procedure is prescribed for making appointment of vacancies arising in Aided Educational Institution.

F 31. Perusal of the approval order dated 12th September, 1980 of the Government of Orissa, Education and Youth Service Department, would reveal that for each M.E. School, only two posts, i.e., one post of a Trained Graduate Headmaster and one post of a Trained Matric Teacher, have been sanctioned. The order clearly provides that no other post of teaching and non-teaching staff would be permitted.

G 32. It is not in dispute that the appointment of all the applicants/respondents/teachers have been made directly by the respective Management without following the procedure as prescribed under the Rules/Statute. It is a trite law that the appointments made in contravention of the statutory provisions are void ab initio. Reference in this respect could be made to the judgments of this Court in the cases of *Ayurvidya Prasarak Mandal and another vs. Geeta Bhaskar Pendse (Mrs) and others*¹, *J & K Public Service Commission and others vs. Dr.*

H ¹(1991) 3 SCC 246

*Narinder Mohan and others*², *Official Liquidator vs. Dayanand and others*³, and *Union of India and another vs. Raghuwar Pal Singh*⁴. A

33. We are unable to accept the contention raised by Shri Gaurav Agrawal and Shri R. Balasubramanian that since the applicants/teachers were appointed on posts which were not on grant-in-aid basis, the said Rules are not applicable. The said Rules would clearly show that they are applicable to Aided Educational Institution. Undisputedly, the institutions in which the applicants/teachers were appointed, were recognized as Aided M.E. Schools vide G.O. dated 12th September, 1980. It is also not in dispute that the appointments so made were subsequent to the schools being recognized as Aided Schools. As such, the contention in that regard deserves to be rejected. B C

34. We further find that the Tribunal, while delivering the judgment and order dated 18th May, 2017 and 30th January, 2018, has failed to take into consideration the earlier orders dated 25th June, 2013 and 23rd September, 2013 delivered by the same Tribunal. In the said orders of 2013, the Tribunal had elaborately considered the provisions of the said Rules and found no merit in the contentions raised on behalf of the applicants therein. The orders passed by the Tribunal ignoring its earlier orders, which were passed elaborately considering the scheme of the said Rules, are totally contrary to the well-established norms of judicial propriety. The situation becomes graver, inasmuch as, the Tribunal has allowed O.A. No.2270 OF 2015 by its order dated 18th May, 2017 filed by Sri Antaryami Bal, whose earlier application being O.A. No. 4029(2) of 1996 with regard to the same relief was rejected by the Tribunal vide its earlier order dated 12th April, 2012. The orders passed by the Tribunal are, therefore, totally unsustainable in view of the law laid down by this Court in the case of *Official Liquidator vs. Dayanand and others* (supra). Not only this, the Tribunal as well as the High Court has failed to take into consideration the order passed by this Court on 2nd December, 1996 in Civil Appeal No. 15712 of 1996⁵. D E F

35. The impugned order passed by the High Court depicts total non-application of mind. Whereas the cause title would itself show that a Writ Petition (Civil) No.6557 of 2018 is disposed of by the impugned G

²(1994) 2 SCC 630

³(2008) 10 SCC 1

⁴(2018) 15 SCC 463

⁵(1997) 2 SCC 635 H

- A judgment, the High Court observed that the order dated 18th May, 2017, passed by the Tribunal in O.A. No.2266 of 2015, has not been challenged by the State. Whereas the teachers have hardly worked for four years and a substantial part thereof on account of interim orders passed by the High Court, the High Court goes on to observe that the teachers have worked for a period of more than 20 years. No reasons, leave aside sound reasons, are reflected in the impugned order while dismissing the writ petitions filed by the State.

- B 36. That leaves us with the submission of Shri R. Balasubramanian, learned Senior Counsel that since the view taken by the Tribunal has been affirmed by the High Court and the Special Leave Petition challenging the same has been dismissed, the view of the Tribunal has become final. In this respect, reliance could be placed on the judgment of this Court in the case of *Kunhayammed and others vs. State of Kerala and another*⁶, wherein this Court has held as under:

- D “27. A petition for leave to appeal to this Court may be dismissed by a non-speaking order or by a speaking order. *Whatever be the phraseology employed in the order of dismissal, if it is a non-speaking order, i.e., it does not assign reasons for dismissing the special leave petition, it would neither attract the doctrine of merger so as to stand substituted in place of the order put in issue before it nor would it be a declaration of law by the*
- E *Supreme Court under Article 141 of the Constitution for there is no law which has been declared.* If the order of dismissal be supported by reasons then also the doctrine of merger would not be attracted because the jurisdiction exercised was not an appellate jurisdiction but merely a discretionary jurisdiction refusing to grant leave to appeal. We have already dealt with this aspect earlier.
- F Still the reasons stated by the Court would attract applicability of Article 141 of the Constitution if there is a law declared by the Supreme Court which obviously would be binding on all the courts and tribunals in India and certainly the parties thereto. The statement contained in the order other than on points of law would be binding on the parties and the court or tribunal, whose order was under challenge on the principle of judicial discipline, this Court being the Apex Court of the country. No court or tribunal or parties would have the liberty of taking or canvassing any view

H ⁶ (2000) 6 SCC 359

contrary to the one expressed by this Court. The order of Supreme Court would mean that it has declared the law and in that light the case was considered not fit for grant of leave. The declaration of law will be governed by Article 141 but still, the case not being one where leave was granted, the doctrine of merger does not apply. The Court sometimes leaves the question of law open. Or it sometimes briefly lays down the principle, may be, contrary to the one laid down by the High Court and yet would dismiss the special leave petition. The reasons given are intended for purposes of Article 141. This is so done because in the event of merely dismissing the special leave petition, it is likely that an argument could be advanced in the High Court that the Supreme Court has to be understood as not to have differed in law with the High Court.”

[emphasis supplied]

37. It is thus clear that a mere dismissal of the Special Leave Petition would not mean that the view of the High Court has been approved by this Court. As such, the contention in that regard is rejected.

38. We are, therefore, of the considered view that the Tribunal has erred in allowing the Original Applications of the applicants/teachers. Similarly, the High Court has also erred in dismissing the petitions filed by the appellants.

39. In the result, the appeals are allowed. The impugned judgment and order of the Division Bench of the High Court dated 20th December, 2018 passed in a batch of writ petitions and the judgments and orders dated 18th May, 2017 and 30th January, 2018 of the Tribunal passed in a batch of Original Applications are quashed and set aside. The Original Applications filed by the respondents/applicants before the Tribunal are dismissed.

40. All pending applications, including applications for intervention, shall stand disposed of. There shall be no order as to costs.