AIR 1950 BOMBAY 18
BOMBAY HIGH COURT
(Principal Seat at BOMBAY)
BHAGWATI , J. and DIXIT , J.

Second Appeal No. 31 of 1945, (from decision of Asst. Judge, Jalgaon, in Appeal No. 257 of 1943.)
D/- 17 - 12 - 1948

District Local Board, Jalgaon Defendant Appellants v. Krishna Sakharam Patil and others Plaintiffs Respondents

Bombay Primary Education Act (4 of 1923), S.8(2) Proviso (b) - S.27, Rules under, R.59 - Allowances payable to teachers at the time of transfer of their employment to local authority - Local authority has no power to discontinue them - "Alter" does not mean abolish - Words and phrases.

Under S. 8(2) and proviso (b), there is no absolute power in the local authority stepping into the shoes of the Government to discontinue the allowances which were payable to the teachers at the time of the transfer of their employment from the Government to the local authority. The only thing which it is open to the District Local Board or the local authority to do was to alter or revise or change the scales of pay and allowances applicable to those teachers at the time when they were taken over and employed by them with the sanction of the Provincial Government but not in a manner so as to involve the abolition or extinction or discontinuance thereof.

[Para10]

The word 'alter' means only change or modify or revise but not abolish.

[Para8]

The terms and conditions on which these teachers were employed under the Government and which were to be adopted by the District Local Board under S. 8(1) of the Act were the terms and conditions on which the teachers were employed at the date of the transfer of the primary schools from the Government to the local authorities and at the time of the absorption of the existing educational staff by the local authorities as contemplated under S. 8 of the Act. This could not have reference to the terms and conditions of employment at the initial stage when the teachers came to be employed by the Government.

[Para4]

The allowances payable to the teachers, at the date of the transfer, were part of the emoluments or remuneration paid by the Government and thereafter by the local authority to those teachers. They were not merely gifts or bonuses paid for more efficient and satisfactory discharge of their duties as head masters and first assistants.

[Para6]

The ordinary law of master and servant cannot be applied in these cases.

[Para6]

H.C. Coyajee and R.B. Kotwal - for appellant. A.G. Desai and V.S. Desai (for No. 1) and H.M. Choksi, Government Pleader (for No. 3) - for Respondents.

Judgement

FACTS :- The suits were filed by Krishna and others (plaintiffs) who were head masters and first assistants in charge of the primary schools under the administration of the District Local Board, East Khandesh, Jalgaon, (defendant 1).

Before the enactment of the Bombay Primary Education Act, Bom IV (4) of 1923, the primary schools were under the Government and all teachers in those primary schools were employed under the Education Department of the Provincial Government. When the Bombay Primary Education Act was enacted it provided for absorption of existing educational staff by the local authorities and relevant provisions were enacted in the Act providing for such absorption. This transfer of primary teachers from the employment of the Government to the employment of the local authorities took place with effect from 1st July 1925. Before that, however, there had been certain revision of the scales of pay granted to the primary teachers by the Government as a result of the deliberations of a committee which had been appointed by the Government in that behalf. The Government had passed on 24th March 1924, a resolution with reference to the revision of time scales and selection grades of the primary teachers in their employ and the resolution put forward a scheme for the revision of pay of those teachers. Certain scales of pay were sanctioned with effect from 1st March 1923, and the question of the allowances to be given to the head masters and the scales thereof was held over for the time being pending further consideration. This appears to have been ultimately decided by the Government as incorporated in their resolution dated 10th March 1926. By that resolution of 10th March 1926, the Government endorsed certain recommendations of a committee which had been appointed by them in this behalf and resolved that the duty allowances (then termed special pay) should be granted on the lines suggested by the committee in para. 2 of their report. These allowances were calculated on the basis of average attendance for two years instead of one year and the whole of the extra expenditure to be incurred in the current year on account of these allowances was to be met from the budgetary provision under the head "31-C, Education Primary-Grants to Local Bodies for Primary Education." The allowances to be paid to the head masters were mentioned in para. 2 of the recommendations of the committee and they were based upon the size and importance of the school and were to be paid whether the head master was permanent or acting. The allowances were to be treated as special pay, i.e., they were to be taken into account in calculating leave allowances and pensions. These allowances were to be given not only to the head masters but also to the first assistants in certain cases therein specified. This was the resolution of the Government which put on definite basis the allowances to be given to the head masters and the first assistants in the primary schools. The Government, accordingly, passed orders on 1st June 1926, for the adoption by the local authorities on the lines accepted by them in their resolution dated 10th March 1926, and ultimately by their resolution

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12th July 1929, confirmed the position that the scales of pay and the scales of allowance which had been thus sanctioned by them would count for the purpose of the grant to be given by them to various

local authorities. This is how the allowances came to be paid by the local authorities to the head masters and the first assistants in the various primary schools administered by the local authorities. It appears, however, that owing to the financial burden of the grants, in aid being considered by the Government to be rather heavy, they resorted to 8 per cent. cut in the primary education grant and enforced the cut by way of reducing protanto the grants in aid which they gave to the local authorities. Subsequently, however, by their resolution dated 17th April 1931, they enunciated their policy with regard to the discontinuance of the allowances which were paid by the local authorities to the head masters and the first assistants in the primary schools administered by the local authorities and stated that Government would not refuse to permit local authorities to abolish payment of head masters and first assistants allowances after 1st December 1930, subject of course to the reservations laid down in the Government resolution referred to above. This enunciation of policy was the precursor of the steps which the local authorities took in the matter of discontinuance of the allowances to the head masters and the first assistants in their primary schools. This 8 per cent. cut which had been effected by them in the primary education grant was restored by the Government in the year 1938. But even then they by their resolution dated 4th October 1938, intimated that the amount made available to the local authorities by the restoration of that cut should, in the first instance, be utilised for the restoration of the temporary percentage cuts made by them in the basic pay of their primary teachers and any other temporary cuts made by them, in their regular expenditure to meet the deficit caused by the application of the cut in the Provincial grant. In Para. 2 of this resolution they clarified the position with regard to the head masters' and the first assistants allowances which had been discontinued or reduced. They stated that

"the other temporary cuts mentioned in clause (b) of para. 1 were not meant to include cuts on account of the discontinuance of reduction of the bead masters' and the first assistants' allowances. Government was not in favour of local authorities restoring the allowances in cases where they had already been discontinued, with the requisite sanction, and is pleased to direct that those local authorities who have not yet discontinued such allowances should submit proposals tot their stoppage, as early as possible. All local authorities should be informed that the payment of such allowances will not be treated as approved expenditure for purposes of Government grant after 1st April 1939."

This was a definite enunciation by the Government of their policy of not treating the Head Masters' and the First Assistants' allowances as any approved expenditure for the purpose of the grant they made to the local authorities in connection with the primary schools. When this resolution of the Government was communicated to the local authorities concerned, the budget Committee of the District Local Board, East Khandesh, passed a resolution discontinuing these allowances. This resolution was considered by the District Local Board on 16th December 1938, and the District Local Board also passed a resolution to the same effect. By their letter dated 22nd/28th December 1938, the District Local Board, East Khandesh, asked for the sanction of the Government to the discontinuance of these allowances as resolved upon by them. There had been considerable agitation in the meantime at the instance of the primary teachers whose allowances were thus discontinued and the Government rightly feeling that they were aggrieved in that behalf appointed a committee called "Moos-Paranjpe Committee" to devise ways and means of redressing distinct legitimate grievances. The Committee made their report and the recommendations of the Committee were considered by the Government by their resolution dated 18th October 1939. The first recommendation of the Committee was adopted by the Government in toto and it was that the teachers actually in receipt of the allowances or in whose

cases the allowances were temporarily retrenched should be allowed to draw the allowance amount from 1st April 1939, i.e., pay for March 1939 as personal pay to be merged in future increments, if any, provided that the teacher drew it or was entitled to it for a full year prior to let April 1939, or prior to the discontinuance of the allowance in 1939. As regards the second recommendation of the Committee, they adopted only the first part thereof which said that "pension contribution and Provident Fund contribution should continue to be paid on the amount of the allowance to be treated as personal pay." In accordance with this resolution passed by the Government on such October 1939, due intimation was sent by the Director of Public Instruction to the local authorities concerned, recommending that they should effectuate the recommendations which had been made by the Government in that behalf. The District Local Board, East Khandesh, accepted these recommendations and issued a circular to the teachers in that behalf, stating that those teachers who were receiving the attendance allowance in the manner therein specified, to such teachers the said allowance should be confirmed (to be paid)

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as personal allowance from 1st April 1939, and on such allowance should also be paid the pension contribution or provident fund. They however, intimated that this personal allowance should be gradually reduced according to the regular increment which would be obtained in the pay thereafter. Even though this circular was issued by the District Local Board, to the teachers, it appears to have been found that the whole system of making such a provision was faulty and a proposition was moved by one of the members of the District Local Board at a meeting of the Committee held on 26th March 1940. that the practice of paying the personal pay involved the question of individuals and, therefore, it was faulty and the Government should be requested to reconsider the matter and to frame such a scheme as would satisfy all classes of teachers and which would not be detrimental to teachers who were likely to retire within the period of next three years in respect of their pensions. Correspondence took place between the District Local Board and the Government in the course of which the Government were asked to clarify their attitude with regard to the grant-in-aid to be given to the District Local Board and the Government clarified the position by stating finally that whatever extra payments were made by the District Local Board in accordance with the recommendations of the Government, they would be admitted foe the purposes of the Government grant at the ordinary two thirds rate in the way indicated in the Primary Education Rule 109(a). This clarification of the position by the Government led to a further consideration of the position by the District Local Board and the District School Board and a resolution was passed by the District School Board on 4th August 1940, that the question as regards this personal pay should be reconsidered. The matter was finally considered on 24th March 1941, by the District Local Board and on that day they passed a resolution that the proposal with regard to the personal pay was defective and it should not be given effect to. This resolution was carried by a majority and as a result of that personal pay was stopped with effect from 1st March 1939. Sanction of the Government was asked for in regard to this resolution which had been passed by the District Local Board and this sanction was forthcoming in the resolution dated 29th August 1941, which stated that the action taken by the District Local Board, East Khandesh, in abolishing permanently the payment of the Head Masters' and First Assistants' allowances from 1st April 1939, i.e., pay for March 1939 payable in April 1939, was approved. This set the final seal on the question of the allowances and personal pay payable to the Head Masters and the First Assistant teachers. The plaintiffs sent notices to the local authority setting out their grievances and demanding the payment of these allowances. The District School Board considered these notices at their meeting

on 27th October 1941, and resolved that the Board bad already passed a resolution for payment of personal pay, that the Board was of the same opinion and hence those notices should be forwarded to the local authority for being considered. The District Local Board stuck to their resolution and these suits came to be filed on 28th October 1941, by the Head Masters and the First Assistants who had suffered by reason of this stoppage of allowances or personal pay, whatever it may be called, by the District Local Board.

The suits which were filed were, (1) for a declaration that all the resolutions and especially the last resolution dated 24th March 1941, abolishing the duty allowance or the personal pay passed by the District Local Board was ultra vires, null and void, (2) for a declaration that the Government Resolution of 4th October 1988, made by the Government was ultra vires, null and void, (3) for a declaration that the plaintiffs got a right to recover duty allowance or in the alternative personal pay from 1st March 1939, (4) for the recovery of the duty allowance or in the alternative the personal pay and costs, and (5) for other reliefs. The District Local Board justified their attitude in their written statement which they filed. They contended that what they had done was in accordance with the directions of the Government and in accordance with the provisions of law in that behalf and that in so far as their action in that behalf had been endorsed and sanctioned by the Government they were perfectly within their rights in doing so. The District School Board adopted the contentions of the District Local Board in their written statement. The Government contended that after the primary schools were transferred to the local authorities from 1st July 1925, it was no concern of theirs as to what the District Local Board did, and that merely because they had given their sanction to the steps taken by the District Local Boards in the matter of the discontinuance of the allowances, they (the Government) were not at all responsible for the same.

The trial Judge held that the action of the District Local Board was well within their rights, that it bad been endorsed and sanctioned by the Government and that, therefore, there was no cause of action which could be sustained by the plaintiffs against the District Local Board. The same was the position with regard to the District School Board. So far as the Government

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were concerned the trial Judge found that there was no cause of action at all against the Government and therefore dismissed the plaintiffs' suits, ordering the plaintiffs to pay the costs of the District Local Board and the District School Board in one set and those of the Government in another set.

The Assistant Judge in the appeals which were filed before him held contrary to the judgment of the trial Judge that on a true construction of S. 8(1) and S. 8(2), proviso (b), Primary Education Act, and R. 59 of the rules framed there under the District Local Boards were not justified in discontinuing the allowances even with the sanction of the Government and that, therefore, the resolutions passed by the District Local Board in that behalf were ultra vires, null and void. A point of limitation was also raised before him as it was before the trial Judge. The Assistant Judge held that the plaintiffs' claim was not barred by limitation under the provisions of s. 26E, Primary Education Act and as a result of his conclusions he allowed the appeals of the plaintiffs and passed decrees against the District Local Board as asked for. Defendant 1 appealed to the High Court.

1. Bhagwati, J. :-(His Lordship after setting out the facts as above proceeded.) The two points which have been agitated before us by Mr. Coyajee, counsel for the appellants, the District Local Board, E.K. Jalgaoa, are (1) that on a true construction of s. 8(1) and S. 8(2) and the proviso thereto of the Primary Education Act and R. 59 of the Rules framed there under, the plaintiffs were not entitled to the declarations and the other reliefs asked for in the plaint and (2) that the suits were barred by limitation under the provisions of s. 26E, Primary Education Act.

2. The determination of these two questions turns on the construction of the relevant provisions of the Primary Education Act and the relevant rules framed under the power given to the Government in that behalf under s. 27 of the Act. It would be necessary, therefore, in determining each one of these two points to set out the relevant provisions of the Act and the Rules.

3. The relevant section in behalf of the first contention is s. 8 and it runs as under :

"8. (1) A local authority shall take over and employ such primary school teachers employed under the Educational Department of the Provincial Government as the Provincial Government may direct, on the same terms and conditions on which such persons were employed under the said department.

(2) The existing and future rights, liabilities, duties as powers of the Provincial Government in respect of such teachers shall vest in and be exercised or performed by the local authority :

Provided :

* * * * *

(b) that the scales of pay and allowances applicable to such teachers at the time at which they are taken over and employed by the local authority shall not be altered without the sanction of the Provincial Government and the Provincial Government may, in such oases as they think fit, direct that such alterations shall take effect from any date prior to that on which such sanction is given. Such direction shall not take effect from a date prior to that determined by the local authority in this behalf."

Rule 59 which was enacted by the Government under S. 27 of the Act prescribed rates of pay for teachers and runs as under :

"59. (1) Primary teachers taken over and employed by a local authority under S. 8(1) of the Act shall be paid at the rates in force for Government service at the time of their being so taken over and employed.

(2) With regard to other primary teachers employed by a local authority. .....

A Head Master and a First Assistant shall get such allowances as were in force on the date of the Act coming into operation, or as may be fixed by the local authority with the previous sanction of Government :

Provided that a local authority may, with the previous sanction of Government, discontinue any such allowance. ....,"

These are the relevant provisions of the section and the rule which require to be considered on behalf of the first contention urged before us by Mr. Goyajee.

4. Mr. Coyajee, in the first instance, contended that when these teachers came to be employed there was, on the facts narrated by us above, no allowance by way of attendance allowance or personal pay granted to them by the Government. The attendance allowance came to be granted to the teachers for the first time under the Government resolution, dated 24th March 1924. It was, therefore, contended that the payment of allowances could not be considered to be a term and condition on which these teachers were employed under the Government and that, therefore, the liability to pay these allowances did not devolve on the District Local Board under S. 8(1) of the Act. We do not accept this contention of Mr. Coyajee. The terms and conditions on which these teachers were employed under the Government and which were to be adopted by the District Local Board under S. 8(1) of the Act were the terms and conditions on which the teachers were employed at the date of the transfer of the primary schools from the Government to the local authorities and at the time of the absorption of the existing educational staff by the local authorities as contemplated under S. 8 of the Act. This could not have reference to the terms and conditions of employment at the initial stage when the teachers came to be employed by the Government. We, therefore, see no substance in this contention of Mr. Coyajee.

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5. It was further contended by Mr. Coyajee - and that is the real contention which we hove to deal with - that even though the terms and conditions on which the teachers were employed under the Government were to obtain as between these teachers and the local authorities on their being absorbed by the local authorities, S. 8(2) empowered the local authority to exercise all the powers existing as well as future which were enjoyed by the Provincial Government in respect of those teachers. It was, therefore, contended that even though the terms and conditions on which these teachers were employed by the Government at the date of their transfer to the local authorities were safeguarded - and these terms and conditions included the attendance allowance which was being paid by the Government to them, which attendance allowance was by virtue of S. 8(1) of the Act payable by the local authorities to those teachers, - the powers of the Provincial Government in respect of such teachers which vested in and were exercisable by the local authorities by virtue of S. 8(2) of the Act were absolute. The Provincial Government had power in respect of those teachers to reduce their salaries as well as the allowances in any manner the Government liked even to the extent of reducing them, in a conceivable case, to zero and that, therefore, the local authorities in whom the same powers vested and came to be exercisable were thus entitled to, in their turn, reduce the salaries and allowances even to zero if they so thought fit. It was contended that proviso (b) to S. 8(2) which laid down that the scales of pay and allowances applicable to those teachers at the time at which they were taken over and employed by the local authority were not to be altered without the sanction of the Provincial Government had no application to the facts of the present case, because the step which the District Local Board took in the matter of the discontinuance of the allowances was in exercise of their absolute powers which were vested in them under the provisions of S. 8(2) of the Act. It was lastly contended that even though it may be taken to be covered by proviso (b) to S. 8(2) as being an alteration in the scales of pay and allowances by the local authority, the requisite sanction had been obtained by them from the Government and that, therefore, their action in that behalf was perfectly justified. The answer that was given to these contentions raised on behalf of the appellants was this. Under S. 8(1) of the Act

there was an absolute guarantee of the terms and conditions on which these teachers were employed under the Government and these terms and conditions were to continue during the time that they were in the employ of the local authority after the transfer of their services from the Government to the local authority, that S. 8(2) did not cover the case before us inasmuch as the local authority had no absolute power given to it to discontinue the allowances which were under S. 8(1) payable by the local authority to these teachers and that in any event even though the sanction of the Government in that behalf was obtained, the case was not covered by proviso (b) to S. 8(2) because, firstly, it was not a case of alteration of the scales of allowances and, secondly, it was not a case of alteration at all but of discontinuance of the same altogether. It was, therefore, contended by Mr. A.G. Desai on behalf of the teachers that the action of the District Local Board in this behalf even though it purported to be sanctioned by the Government was ultra vires, null and void.

6. There is no doubt that whatever were the existing terms and conditions on which these teachers were employed under the Government at the date of the transfer were the terms and conditions on which the District Local Board took over and employed these teachers in the primary schools which were after 1st July 1925 administered by them. These terms and conditions included the scales of pay and also the scales of allowances which had been sanctioned by the Government under their resolutions, dated 24th March 1924 and 10th March 1926. These attendance allowances, - call them by the name of attendance allowance or daily allowance or personal pay or special pay were part of the emoluments or remuneration paid by the Government and thereafter by the local authority to these teachers. They were not merely gifts or bonuses paid by the Government or the local authority, as the case may be, for more efficient and satisfactory discharge of their duties as Head Masters and First Assistants. They were a part and parcel as it were of the remuneration earned by them, which they earned in consideration of the discharge of their duties as Head Masters and First Assistants and were in fact for the purpose of leave, pension, etc., treated as if they were a part of the pay earned by and payable to them by the Government or the local authority as the case may be. The question that arises, further for our consideration is how far were the local authorities entitled to alter these terms and conditions. Unfortunately, we have not got before us what were the terms and conditions on which these teachers were employed under the Government. What were the powers of the Provincial Government in respect of those teachers existing at the time when the transfer

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was effected is also in an equally nebulous state. Mr. Kotwal who argued for the District Local Board in the Thana and the Kolaba cases before us, therefore, had resort to the rights and liabilities of the Government under the ordinary law of master and servant. He contended that, according to the ordinary law of master and servant, the master was entitled to alter the terms of the employment of his servant in any manner he liked and substitute one contract for another in accordance with his sweet will in so far as he has not trammelled with any provision of any statute in that behalf. This law, he submitted, in the absence of any other materials, applied in the case of teachers and the Government of the teachers and the local authority in whom all the rights and powers of the Government became vested under S. 8(2) of the Act. In our opinion, however, the ordinary law of master and servant cannot be legitimately applied in the cases between the teachers employed by the Government and the Government on the one hand and the teachers employed by the local authority and the local authority on the other. The case of private employment is quite different from that of Government employment

or employment by a local authority which steps into the shoes of the Government. There is no stability of tenure, there is no expectation of pension after retirement or provident fund, etc., in the case of private employment. In the case of Government employment or employment under the local authority all these considerations do prevail and it would not be, in our opinion, legitimate to draw the analogy of the ordinary law of master and servant in the cases before us. We may repeat that unfortunately on the record as it obtains before us there is nothing to show what were the existing terms and conditions on which these teachers were employed under the Government at the date of the transfer and what were the existing rights and powers of the Provincial Government in respect of those teachers at that date which vested in and would come to be exercised by the local authority under S. 8(2) of the Act. In the absence of these materials we have to go by whatever appears on the record and also whatever construction can be legitimately put on the relevant provisions of S. 8 of the Act.

7. As regards the expression "scales of pay and allowances" which has been used in proviso (b) to s. 8(2) of the Act, considerable light is thrown on what that means if one has regard to what has been enacted in S. 59 of the rules which were framed by the Government under the rule-making power vested in them under S. 27 of the Act. That rule confines itself to the rates of pay for teachers, and in R. 59, sub-r. (1), it has been definitely laid down that primary teachers taken over and employed by a local authority under S. 8(1) of the Act shall be paid at the rates in force for Government service at the time of their being so taken over and employed. Rule 59, sub-r. (2), concerns itself with the cases of other primary teachers employed by a local authority and it lays down the rates with regard to them. It also specifies in the very sub-r. (2) itself that the Head Master and the First Assistant Master shall get such allowances as were in force on the date of the Act coming into operation, or as may be fixed by the local authority with the previous sanction of Government. So far with regard to the allowances to be paid to the Head Masters and the First Assistants who under the provisions of sub-r. (2) came to be employed by the local authority, but were not included in the category of the primary teachers taken over and employed under S. 8(1) of the Act, which category was dealt with in sub-r. (i) of this R. 69. The further provision contained in this sub-r. (2) was that even these allowances which were to be paid to the Head Masters and the First Assistants could be discontinued by the local authority with the previous sanction of the Government. The word used here is "discontinuance" and not alteration, as we find in S. 8(2), proviso (b). But even this discontinuance baa reference to cases of Head Masters and First Assistants who fall within the category of 'other primary teachers employed by a local authority' as stated in the earlier part of sub-r. (2), which primary teachers are not those primary teachers who have been taken over and employed by the local authority under S. 8(1) and provision in whose behalf has been made under sub-r. (1) of R. 59. This goes to show that so far as the terms and conditions of the employment of the primary teachers who were taken over and employed by the local authorities under S. 8(1) of the Act are concerned, they were really meant to be absolutely safeguarded to them and were not to be, touched at all in spite of the general provision contained in S. 8(2) of the Act except in the manner laid down in proviso (b) to S. 8(2). The scale of allowances which had been allowed to these Head Masters and First Assistants was a part of the terms on which they were employed by the Government and if the scale of allowances which was thus paid to them formed a part of these terms and conditions, the local authorities were bound by these terms and conditions and no alteration could be effected is them unless such alteration could come within the latter provision of S. 8 enacted in S. 8(2) and the proviso (b) thereof and unless the

scale of such allowances was altered by the local authorities after the sanction of the Provincial Government in that behalf, having resort to the provisions of proviso (b) to s. 8, sub-s. (2) of the Act. In our opinion, therefore, except in those cages where the provisions of the proviso (b) to s. 8(2) applied, there was no question of making any change in those terms and conditions including the attendance allowance which was being paid by the Government to those teachers at the date of the transfer on 1st July 1925. There was no question of any absolute power having vested in the local authority stepping into the shoes of the Government in accordance with s. 8(2) of the Act. If those absolute powers were inclusive of the power of altering the pay and the allowances payable to these teachers at the time when they were taken over and employed by the local authority we do not see any reason why proviso (b) should have been enacted in the manner it was done. It was open, no doubt, by virtue of the provisions of proviso (b) to alter the scales of pay and allowances. The scales could be altered in accordance with the financial situation as it obtained from time to time and if the scales of allowances came to be so altered, such alteration would not be valid without the sanction of the Government obtained in that behalf. In so far as these scales of allowances were altered in this manner, there was the power in the local authority by virtue of S. 8(2) to make the alteration in the terms and conditions on which these teachers wore taken over and employed by the local authority under S. 8(1). But unless and until what was sought to be done by the local authority was covered within the strict terms of proviso (b) to S. 8(2), it would not be competent to the local authority stepping into the shoes of the Government to make any such alteration in those terms and conditions. It would, therefore, be necessary to see what exactly were the powers which the local authorities had by virtue of proviso (b) to S. 8(2). What was allowed to be done by them under this proviso (b) was the alteration in the scales of pay and allowances applicable to those teachers at the time they were taken over and employed by them.

8. Considerable argument has been addressed on the true interpretation to be given to the word "altered." It was urged on behalf of the District Local Board that the alteration included abolition, extinction or effacement and therefore it was within their competence to reduce this allowance to zero, allowing not a single pie to the Head Masters and the First Assistants by way of attendance allowance which they were entitled to at the time when the transfer took place. On the other hand it was contended on behalf of these teachers that alteration meant a revision or a change or modification without effacing the thing itself or without bringing about non-existence of the thing sought to be revised. Reliance was placed in behalf of this contention on the Dictionary meaning as it is found in the Oxford English Dictionary, p. 50, where "alter" is shown to mean "to make otherwise or different in some respect, without changing the thing itself; to modify." If this meaning was adopted, alteration would certainly not mean extinction or abolition as it has been contended on behalf of the District Local Board. We are of opinion that the latter meaning which is the Dictionary meaning of the word "alter" is the correct one to adopt. It was not within the contemplation of the Legislature when it enacted proviso (b) to S. 8(2) to provide for the total abolition or discontinuance of the pay or the allowance which was granted to these teachers by the Government at the time of their transfer. There is no doubt that after the transfer of the primary schools from the Government to the District Local Board the Government also undertook a sort of financial obligation to grants the grants-in-aid to the District Local Boards under the head "grants to local authorities for primary education" to be provided for in the budget. It was a delegation of the functions of the Government to the District Local Boards by way of transference of the power to carry on the administration of the primary schools which initially was the function discharged by the Government. This step in Self-Government which was really given to the District Local Boards was, in view of the financial obligations which it would involve, made the

subject-matter of the grants-in - aid to be given by the Government to the District Local Boards or the local authorities. It was, therefore, necessary after it came to them that the District Local Boards or the local authorities should, if the circumstances so warranted and their income was such as would not allow them to continue the scales of pay and allowances which prevailed hithertofore, submit schemes for alteration of these scales of pay and allowances to Government with a view to reduce their expenditure or even to impose less financial burden on the Government who were going to give grants-in-aid commensurate with the satisfaction of the necessary obligations by the local authorities in the matter of the conduct of the primary schools which were thus entrusted to their charge. It was, therefore, enacted in proviso (b) to s. 8(2) that the scales of pay and allowances could be altered by the local authorities with the sanction

of the Government. The sanction of the Government would be needed, firstly, because these scales of pay and allowances being part and parcel of the terms and conditions on which these primary teachers were taken over and employed by the local authorities after 1st July 1925, were safeguarded unto these primary teachers and, secondly, because the Government being interested in the proper administration of these educational institutions by the local authorities and in granting the grants-in-aid to them in order that the local authorities should satisfactorily discharge these obligations would also consider how, far they would be involved in the grants-in-aid and how far they would be called upon to render unto these local authorities the grants-in-aid for the necessary purposes. Bat it cannot by any stretch of imagination be understood that the scales of pay and allowances were capable of being reduced to zero. We cannot for the purpose of understanding this argument and appreciating it divorce the scales of pay from the scales of allowances. Even though for the purpose of leave, pension, etc., the allowances were assimilated to the pay, nonetheless they were granted to these teachers on different basis altogether and they should be treated one distinct from the other. As you could not reduce the scale of pay to zero, you could not also reduce the scale of allowances to zero in so far as they had been in fact awarded to the teachers before the transfer was effectuated from the Government to the local authorities. We are, therefore, of opinion that the word 'alter' means only change or modify or revise but not abolish as it has been contended on behalf of the District Local Board. If this is the true meaning to be given to the word 'alter' it follows that the scales of pay and allowances which could be altered under the terms of proviso (b) to S. 8(2) would only mean such alterations or changes therein as would not involve the extinction or abolition or discontinuance thereof, even though the sanction of the Provincial Government be obtained in that behalf. It was, therefore, not open to the District Local Boards to discontinue altogether the allowances which were payable to these teachers at the time when they were taken over and employed by the local authorities under S. 8(1) of the Act.

9. It was, however, urged by Mr. Coyajee for the District Local Board that reading the proviso in this manner runs counter to the dictum of their Lordships of the Privy Council to be found in M. and S. M. Railway v. Begwada Municipality, 47 Bom LR 587 : (AIR (31) 1944 P.C. 71). In that case their Lordships of the Privy Council held :

"The proper function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment, and its effect is confined to that case. Where the language of the main enactment is clear and unambiguous, a proviso can have no repercussion on

the interpretation of the main enactment, so as to exclude from it by implication what clearly falls within its express terms."

Far be it from us to quarrel with this dictum of their Lordships of the Privy Council in the remotest degree. It is an enunciation of principle as regards the construction of the proviso with relation to the main enactment which is binding on us and if the facts of this case warranted the construction which has been put upon s. 8(2) and proviso (b) thereto by the counsel for the District Local Board we would have certainly, following this dictum of their Lordships of the Privy Council, held accordingly. However, this thing is to be observed in the case before us that in S. 8(2) we do not find anything which would go to show that this absolute power which is claimed by the local authorities to alter the terms of employment in any manner they chose to do in to be found or can be read in it in express terms. Not only there is no such power to be found within the express terms of the main enactment, viz., s. 8(2), it being in the nebulous state which we have described it to be in the earlier part of this judgment but it is not even to be found in S. 8(2) by necessary implication. In order to find whether it is to be read in the terms of S. 8(2) by necessary implication, we must have regard to the provisions of S. 8(2) including proviso (b) thereto. If proviso (b) to S. 8(2) is read in the manner suggested by the counsel for the District Local Board it would mean that for the exercise of the ordinary power of altering the scales of pay and allowances it would be requisite to obtain the sanction of the Government in that behalf, whereas in order to discontinue it altogether which is an exercise of a higher and larger power there would be no sanction of the Government at all necessary because it would be embraced in the terms of the main enactment in S. 8(2) of the Act. With utmost respect to the learned counsel for the District Local Board we are not inclined to accept this contention of his. There is no warrant for reading this power in the main enactment of S. 8(2) of the Act, which does not exist in express terms, by holding that it is to be necessarily implied therein on a true reading of all the provisions of s. 8(2). What we have got to construe is S. 8(2) as a whole inclusive of proviso (b) and there is no escape from this conclusion that if both these provisions are to be read together they should be read in a manner in which there is the least absurdity involved. Mr. Kotwal who appeared for the

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District Local Board in the Thana and the Kolaba cases suggested a way out of this absurdity by inviting us to construe the word "alter" as including abolition. It is a very ingenious way out of the absurdity in which we would be involved if we read this provision in the manner suggested by the counsel for the District Local Board. We are, however, having regard to the discussion which has proceeded in the earlier part of this judgment on the true interpretation of the word "alter," not inclined to accept this way out which has been so ingeniously suggested by Mr. Kotwal. That we are justified in adopting this course and interpreting s. 8(2) and proviso (b) thereto in the manner we do in order to avoid the absurdity which we have thus pointed out is also supported by a passage from Maxwell on Interpretation of Statutes, Edn. 9, pages 207 and 212 Chapter VII, section 2, of Maxwell on Interpretation of Statutes, deals with presumption against intending injustice or absurdity, and it has been stated at page 207 :

"Whenever the language of the Legislature admits of two constructions and, if construed in one way, would lead to obvious injustice, the Courts act upon the view that each a result could not have been intended, unless the intention had been manifested in express words."

At p. 212 it has been stated : "The same argument applies where the consequence of adopting one of two interpretations would be to lead to an absurdity."

10. Having regard, therefore, to the observations which we have made above that reading proviso (b) in the manner suggested by the counsel for the District Local Board would involve us into an absurdity, we are of the opinion that S. 8(2) and the proviso (b) thereto should be read as laying down that there is no absolute power in the local authority stepping into the shoes of the Government to discontinue the allowances which were payable to the teachers at the time of the transfer of their employment from the Government to the local authority and that the only thing which it was open to the District Local Board or the local authority to do was to alter or revise or change the scales of pay and allowances applicable to those teachers at the time when they were taken over and employed by them with the sanction of the Provincial Government but not in a manner so as to involve the abolition or extinction or discontinuance thereof in the manner it was done in the case before us. We therefore, reject the contentions which have been urged before us by the counsel for the District Local Board and hold that whatever the District Local Board did even though with the sanction of the Government was ultra vires, null and void. The discontinuance of the teachers' allowance, therefore, with effect from 1st March 1939, as it was resolved upon by the District Local Board on 24th March 1941, calling it merely a personal pay but actually meaning to discontinue the attendance allowance which was being granted by them before 1st March 1939, was absolutely unjustified. (The rest of the judgment is not material for the purposes of reporting.)

Appeals Dismissed .