**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

Letters Patent Appeal No. 2051 of 2010 in Special Civil Application No. 11753 of 2003 to Letters Patent Appeal No. 2065 of 2010 and Letters Patent Appeal No. 288 of 2011 in Special Civil Application No. 4122 of 2003 to Letters Patent Appeal No. 301 of 2011 in Special Civil Application No. 11749 of 2003 and Letters Patent Appeal No. 422 of 2011 in Special Civil Application No. 11694 of 2003 to Letters Patent Appeal No. 430 of 2011 in Special Civil Application No. 11708 of 2003 and Letters Patent Appeal No. 715 of 2011 in Special Civil Application No. 11650 of 2003 to Letters Patent Appeal No. 725 of 2011 in Special Civil Application No. 11746 of 2003 and Letters Patent Appeal No. 726 of 2011 in Special Civil Application No. 11692 of 2003 to Letters Patent Appeal No. 728 of 2011 in Special Civil Application No. 11751 of 2003 and Letters Patent Appeal No. 779 of 2011 in Special Civil Application No. 11670 of 2003 to Letters Patent Appeal No. 787 of 2011 in Special Civil Application No. 11713 of 2003 and Civil Application No. 9983 of 2010 in Letters Patent Appeal No. 2051 of 2010 and Civil Application No. 3127 of 2011 in Letters Patent Appeal No. 422 of 2011 to Civil Application No. 3135 of 2011 in Letters Patent Appeal No. 430 of 2011 and Civil Application No. 1835 of 2011 in Letters Patent Appeal No. 288 of 2011 to Civil Application No. 1848 of 2011 in Letters Patent Appeal No. 301 of 2011

Decided On: 06.05.2011

Appellants: **Ninama Udesinh Limabhai**
**Vs.**
Respondent: **State of Gujarat and 2 Ors.**

**Hon'ble Judges/Coram:**
V.M. Sahai and G.B. Shah, JJ.

**JUDGMENT**

**V.M. Sahai, J.**

1. This appeal connected with other appeals arise out of a common judgment and order of learned Single Judge dated 25.03.2009 passed in Special Civil Application 10801 of 2003 with Special Civil Application Nos. 4122 of 2001, 11646 to 11753 of 2003. In the writ petitions, orders dated 07.04.1998 and 22.04.1999 passed by the State Government were under challenge before the Learned Single Judge.

2. In this group of writ petitions, the Petitioners have challenged the orders dated 7th April, 1998 and 22nd April, 1999 made by the State Government in exercise of power of review conferred by Section 24(4) of the Bombay Primary Education Act, 1947 [hereinafter referred to as "the Act"]. By Circular dated 2nd January, 1990, the State Government decided to fill-in the vacant posts of Primary School Teachers reserved for Scheduled Tribe candidates under the District Primary Education Committees. For this purpose, concession in respect of the required educational qualification was allowed i.e., the candidates who had passed SSC examination were considered eligible for appointment as primary school teacher. The requirement of Primary Teachers' Certificate was done away with.

2.1 Pursuant to the decision of the State Government dated 02.01.1990, the District Primary Education Committee [for short "the Committee"] issued public advertisement on 13th and 15th February, 1990. By the said advertisement, the scheduled tribes persons who had passed SSC examination and who had attained the age of 18 years as on 31st December, 1989 were invited to appear before the interview committee along with application in one's own hand and certificates in support of the educational qualification, age, caste, etc. Pursuant to the said recruitment drive, the Petitioners and many others were appointed by the Committee as primary school teacher on 12th March, 1991.

2.2 Upon investigation, it was learnt that the large scale irregularities were committed in the said recruitment drive. Amongst persons selected and appointed pursuant to the aforesaid recruitment drive, were the persons who were not eligible for appointment as per the advertisement dated 13th/15th February, 1990. There were persons who had not applied in answer to the advertisement and had not appeared before the interview committee, etc. Considering such cases, the Petitioners and several others whose appointment was found to be irregular were discharged from service by orders dated 12th May, 1993.

2.3 Feeling aggrieved, such persons preferred Special Civil Application No. 3141 of 1993 and other petitions before this Court under Article 226 of the Constitution of India. The said writ petitions were allowed by the judgment and order dated 22nd September, 1993. The Hon'ble Court was pleased to hold that, "in my opinion, the contention is well founded that the ratio laid down by the Hon'ble Supreme Court in the aforesaid decision would not apply and before terminating the services of the Petitioners, an opportunity of hearing is required to be given to the Petitioners. However, as observed by us hereinabove, it is not necessary for the Respondent authorities to follow the procedure laid down in the Gujarat Panchayats Act or the Rules framed thereunder as also under Article 311 of the Constitution of India. Since it is the case of the Respondent authorities that the Petitioners could not have been appointed to the post of Primary Teachers but for illegal and fraudulent inclusion of the names of the Petitioners in the Select List, it cannot be said that their entry in the public employment was legal and valid. They, therefore, cannot get 'status' as such and the contract can be avoided by following the procedure in accordance with law."

2.4 Pursuant to the direction issued by the said judgment, show-cause notice was issued upon such teachers on 17th December, 1993 and by orders dated 12th May, 1994, service of the Petitioners and such other teachers was terminated with effect from 30th May, 1994. Feeling aggrieved, the Petitioners and the other teachers preferred appeal before the Primary Education Tribunal [for short "the Education Tribunal"] under Sub-section 2 of Section 24 of the Act. The said appeals were dismissed. Feeling aggrieved, the Petitioners and the other teachers preferred Special Civil Application No. 12312 of 1994 and other petitions before this Court. The said petitions were allowed by the judgment and order dated 17th January, 1996. By the said order, the order of the Education Tribunal was set aside. The appeals were remanded to the Education Tribunal for hearing and taking decision afresh. The Appellants teachers were permitted to appear through Counsel. Since the order of remand, by orders dated 17th October, 1996, the Education Tribunal was pleased to allow the appeals. The orders of termination of service were set-aside. The Appellants were directed to be reinstated in service with the benefit of continuity in service without the backwages.

2.5 The orders dated 17th October, 1996 were challenged in review by the State Government in exercise of power conferred by Sub-section (4) of Section 24 of the Act. The State Government by order dated 10th June, 1997 set-aside the above referred orders dated 17th October, 1996 made by the Education Tribunal.

2.6 The order dated 10th June, 1997 was challenged before this Court in Special Civil Application No. 4635 of 1997 and allied matters. The said group of petitions came to be allowed on 9th October, 1997. The order dated 10th June, 1997 made by the State Government was quashed and set-aside and directions were given, inter alia, to the Education Secretary, Government of Gujarat to rehear the entire matter and decide the matter after hearing the learned Counsel Mr. P.D. Gadhvi. Pursuant to the said directions, the appeals were heard and decided by the Education Secretary afresh. By order dated 7th April, 1998, the above referred orders dated 17th October, 1996 made by the Education Tribunal were set-aside.

2.7 It appears that the learned Counsel Mr. Gadhvi had approached the Hon'ble Chief Minister in the subject matter. After considering the said representation, by order dated 22nd April,1999, the Director of Primary Education and the Committee were informed that the State Government had decided not to absorb the concerned primary school teachers in service. The learned Single Judge in the case of Palas Prabhatsinh Mohansinh and Ors. v. District Primary Education Officer and Ors., in Special Civil Application No. 18219 of 2003 decided on 01.10.2004 in identical matter has succinctly dealt with the arguments of the Counsel for the Petitioners and has given cogent reasons after considering the other decision rendered by Learned Single Judge. The relevant part of the judgment is extracted as under:

Learned advocate Mr. Pujara has submitted that the service of the Petitioners came to be terminated on account of alleged irregularities committed by the Interview Committee. No illegality can be attributed to the Petitioners. The Petitioners not being at fault, their service ought not to have been terminated. He has also submitted that the power of review under Sub-section (4) of Section 24 of the Act exercised by the State Government was without the jurisdiction. He has submitted that an appeal shall not lie to the Education Tribunal in the subject matter. The order made in review is, therefore, without the authority of law and cannot be sustained. He has also submitted that the approach of the State Government is perverse. No wrong having been committed by the Petitioners, the service of the Petitioners ought not to have been terminated. He has sought support from the judgments of this Court in the matter of Mansuri Abedaben Rasidbhai v. District Primary Education Officer and Anr. [Special Civil Application No. 10113 of 1993 : Decided on 15th/21st September, 1994:: Coram-S.D Shah, J.] and in the matter of Manat Khemraj Somaji v. District Primary Education Officer [Special Civil Application No. 11317 of 2000 and allied matters: Decided on 27th December, 2000 Coram-H.K. Rathod, J.]

The petition is contested by learned advocate Mr. Mishra. Mr. Mishra has submitted that the petition deserves to be dismissed on the ground of delay and latches alone. He has submitted that the order made by the State Government on 7th April, 1998 is challenged in the present petition filed in the month of December, 2003 i.e. after more than five years.

Learned AGP Mr. Desai has contended that the petition deserves to be dismissed on the ground of delay and latches. He has also submitted that the Petitioners had preferred appeal before the Education Tribunal under Section 24(2) of the Act. The Petitioners, thus, having submitted to the jurisdiction of the Education Tribunal, they cannot be permitted to challenge the authority of the State Government to take the order of the said Tribunal in review under Sub-section (4) of Section 24 of the Act. He has taken me through the reasons why service of the primary school teachers; including the Petitioners, was required to be terminated. He has submitted that as against the 469 vacancies reserved for Scheduled Tribes candidates, the Committee pursuant to the advertisement dated 13th and 15th February, 1990 made as many as 760 appointments. Upon preliminary inquiry, it was found that several of the said teachers had not appeared before the interview committee. Their names were entered subsequently by individual member of the interview committee at their sweet will. Many of them were not eligible for appointment even on the relaxed standards. The interview committee had included names of the selected candidates in the merit list clandestinely. Keeping in view the illegality committed in appointment of the primary school teachers, the appointment given to such teachers could not have been sustained. Each individual teacher was given notice to show cause and was also given opportunity of hearing before the Education Tribunal and before the State Government. The said teachers were permitted to appear through the advocate. The said teachers including the Petitioners were unable to refute the charge that they were not eligible for appointment or that they had not appeared for interview. The Petitioners' appointment being illegal and void ab initio, the action of the State Government in sustaining the orders of termination of their service and in not absorbing such teachers in service is justified and is in the larger interest of the public.

In the matter of Mansuri Abedaben Rasidbhai [Supra], pursuant to the advertisement dated 10th April,1991 issued by the District Primary Education Committee, Sabarkantha, the writ Petitioners had applied for selection and appointment as Primary School Teachers. The writ Petitioners were called for interview in the month of February, 1992. They were selected and appointed as Primary School Teachers by orders dated 16th April, 1992 made by the District Primary Education Officer. In all 442 candidates were appointed. Within months of their appointment, by orders made on 16th February, 1993, service of some 118 such teachers [writ Petitioners] was terminated on account of irregularity committed by the selection committee. The said orders were challenged before this Court in Special Civil Application No. 1415 of 1993 and 96 other petitions. By judgment and order dated 5th April, 1993 of this Court [Coram: Mr. Justice C.K. Thakkar, J., as he then was], the impugned orders of termination of service were set-aside. The said orders were directed to be treated as show cause notice and the Petitioners were directed to file their reply/explanation and to produce evidence; documentary or other material, for consideration by the authority, if desired, and the Respondent-authorities were directed to pass appropriate orders in accordance with law. Pursuant to the said direction, fresh orders of termination of service came to be passed on 25th September, 1993 which were the subject matter of challenge in the said group of petitions. It was found that the discrepancies/irregularities were with respect to the additional marks given to some of the Petitioners though they were not entitled to such additional marks. The candidates not entitled to relaxation and reservation were appointed as reserved categories such as Scheduled Caste, Scheduled Tribes, Baxi Panch, Physically Handicapped. General category candidates were appointed on the posts reserved for Scheduled Caste/Scheduled Tribes/Baxi Panch/Physically Handicapped. The learned Judge was pleased to consider whether the said writ Petitioners or any one of them could be said to be guilty of misrepresentation. It was observed that the writ Petitioners had produced certificates and marksheets of examinations that they had passed. It was also observed that, "..wrong allotment of additional marks for passing examination in special subjects do not result into exclusion of meritorious candidates." The Court was of the opinion that the Petitioners were not guilty of any irregularity in obtaining employment. The Court, therefore, held that, "...I am of the opinion that since the employment of the present Petitioners cannot be said to be vitiated by any fraud, mistake or misrepresentation on their part and since no irregularity in getting employment be attributed to them the Respondents cannot be permitted to terminate their services on the ground that their officer has committed irregular in giving employment to the Petitioners. These observations are made in the peculiar facts and circumstances of the case because to permit the Respondents to terminate these 70 teachers would further give rise to further litigation inasmuch 244 other teachers who are also irregularly appointed shall have also to be terminated after a period of service of around three years. Therefore, the orders of termination passed against rest of the Petitioners are also required to be quashed and set aside and are hereby quashed and set-aside.

In my view, the above observations made by the Hon'ble Court do not lend support to the Petitioners herein. As I shall discuss hereafter, if the Petitioners had been given undue favour, the Petitioners undoubtedly were party to such illegality. Moreover, the peculiar circumstances which existed in the said group of petitions, referred to in the above paragraph do not exist in the present petition.

The Petitioners in the matter of Manat Khemraj Somaji and the group of petitions were Scheduled Tribes candidates. They were appointed as Primary School Teachers by the Committee pursuant to the above referred advertisement published on 15th February, 1990. They were given appointment on 28th August, 1990. After their appointment, the Petitioners were sent for PTC training. All the Petitioners acquired qualification of PTC. More than five years after they joined service and after they undertook PTC training and acquired Certificate, on 9th January, 1996, the said Petitioners were given notice to show cause why their service should not be terminated as they did not possess the requisite marks at the SSC examination and that their selection and appointment was bad and illegal. Pursuant to the said show cause notice, the said writ Petitioners' service came to be terminated after another five years. The Hon'ble Court observed that as the writ Petitioners were not alleged to have obtained employment by fraud and/or malpractice, their service could not have been terminated. The termination of service was held to be punitive. Such orders of termination could not have been made without holding regular inquiry as provided under the Gujarat Panchayat Service [Discipline and Appeal] Rules, 1964. The orders of termination of service were held to be contrary to the basic principles of natural justice and contrary to the relevant provisions of 1964 Rules. Consequently, the said orders were quashed and set-aside. This judgment also shall lend no support to the present petition. As recorded hereinabove, the order of termination of service of the Petitioners came to be made within less than two years of their joining service. The said orders were challenged before this Court in several rounds of litigation and also before the Education Tribunal under Section 24 of the Act. At no point of time, the Petitioners demanded regular disciplinary action though they were before this Court at as many as three different stages. This Court did not consider necessity for such disciplinary action. On the contrary, as recorded hereinabove, Hon'ble Mr. Justice C.K. Thakkar [as he then was] in his Lordship's judgment dated 22nd September, 1993 specifically held that, "..it is not necessary for the Respondent authorities to follow the procedure laid down in the Gujarat Panchayat Act or the Rules framed thereunder as also under Article 311 of the Constitution of India." The Petitioners are, therefore, debarred by principle of res judicata from contending that a disciplinary action as envisaged by the Rules of 1964 was warranted.

On perusal of the records, it transpires that as against the 469 vacant posts for appointment of Scheduled Tribes candidates, the Committee decided to make appointment of 602 Scheduled Tribe Primary School Teachers. As against the said decision, the Committee made as many as 760 appointments of ST Primary School Teachers. It was found that the Petitioners and the other candidates had not even appeared for interview nor had they made application in their own hand, as required. The individual members of the Committee had added names of the candidates to the individual selection list drawn by them, after interviews were over. These candidates were not eligible for appointment either because they had not attained the required age or that they had not secured prescribed marks at the SSC examination. The Petitioners failed to prove before the Education Tribunal or before the State Government that pursuant to the advertisement they did make application in writing as required and that they did appear before the interview committee for interview. In absence of formal application in writing and in absence of interview by the interview committee, the Petitioners could not have secured employment without being active party to the illegality committed by the interview committee. There is no gainsaying that the Petitioners secured employment illegally in collusion with or with the connivance of the interview committee. The Education Tribunal also, by orders dated 17th October, 1996, without considering the rival contentions of the parties to the appeal accepted the contentions raised on behalf of the Appellants for asking. Sub-section (4) of Section 24 of the Act expressly empowers the State Government, inter alia, to call for and examine any order made in appeal by the Education Tribunal, for the purpose of satisfying itself as to the correctness or propriety of the punishment awarded under the said order and to modify, annul or reverse or to pass such order thereon as it deems fit.

As recorded hereinabove, it was the Petitioners who approached the Education Tribunal under Section 24(2) of the Act and submitted to the jurisdiction of the Education Tribunal of their own volition. The Petitioners also agreed before this Court [Coram: M.S. Parikh, J.] for remand of the appeals to the Education Tribunal. The Petitioners, therefore, cannot now be permitted to question the jurisdiction of the Education Tribunal to entertain and decide the appeals preferred by the Petitioners and the power of the State Government to take the orders made by the Education Tribunal in review.

The petition also deserves to be dismissed on the grounds of delay, latches and acquiescence. The order made by the State Government as far back as on 7th April, 1998 has been challenged in the present petition preferred nearly after six years.

No other contention is raised before me. In view of the above discussion, the petition is dismissed in limine. Notice is discharged.

3. Learned Counsel Mr. R.D. Dave for the Appellants/original Petitioners has urged that the learned Single Judge while dismissing writ petitions on 25.03.2009, which gives rise to the present group of appeals, has not considered the judgment dated 27.12.2000 passed by another learned Single Judge of this Court in Special Civil Application No. 11317 of 2000 and allied matters and has only relied on the decision of the learned Single Judge dated 01.10.2004 passed in Special Civil Application No. 18219 of 2003.

4. Learned Counsel for the Petitioners has further urged that the Petitioners were eligible and have passed SSC and, therefore, they could not be said ineligible and there was no last date fixed in the advertisement for making an application for appointment.

5. According to learned Counsel for the Respondent No. 2 Mr. R.A. Mishra, for each district, different last dates were given for making an application under the advertisement. The Petitioners were appointed but their appointments have been cancelled on the ground that there was large scale irregularities and illegalities committed in the selection as upon investigation, it was found that amongst the persons selected, even those persons have been appointed who were not eligible for appointment as per the terms and conditions of the advertisement issued by the State Government. The persons who had not applied in pursuance to the advertisement and who had not appeared before the Interview Committee were appointed. Therefore, the Appellants and several other candidates were terminated from service.

6. Learned Counsel for the Respondents relied on the decision of learned Single Judge dated 01.10.2004 passed in Special Civil Application No. 18219 of 2003 wherein the learned Single Judge held that order of termination of service of the Petitioners who were Primary School Teachers was passed less than two years of their joining service and 469 posts of Primary Teachers were vacant for filling from the candidates of Schedule Tribes and the Committee decided to make appointment of 602 Schedule Tribe candidates as Primary School Teachers and 760 appointments were made by the Committee of Primary School Teachers which was in excess of the vacant posts. The learned Single Judge further found that the candidates were not eligible for appointment either because they had not attained the required age or they had not secured prescribed marks at the SSC examination. They were also not able to prove before the learned Single Judge or before the Tribunal or before the State Government that they made an application in pursuance to any advertisement. The learned Single Judge recorded a categorical finding of fact that in absence of formal application in writing and in absence of interview by the Interview Committee, the Petitioners could not have secured employment without being active party to the illegality committed by the Interview Committee.

7. Learned Counsel for the Petitioners relied on the decision dated 27.12.2000 of another Learned Single Judge passed in the case of Manat Khemraj Somaji v. District Primary Education Officer, Special Civil Application No. 11317 of 2000 and allied matters whereby the learned Single Judge allowed the writ petitions and set aside the termination order passed by the State Government. According to the learned Counsel for the Petitioners, though the said judgment was cited before the learned Single Judge, the same was not considered.

8. Learned Counsel for the Petitioners further urged that backlog vacancies arose as the backlog vacancies of Schedule Tribes candidates could not be filled by the State Government. Therefore, Circular dated 02.01.1990 was issued by the State Government. It is necessary to extract the English translation of Circular dated 02.01.1990 as under:

Circular:

Pursuant to the Special Recruitment Campaign commenced by the Government for completion of backlog of the post reserved for S.C./S.T. in the recruitment of Primary Teachers in the State, the advertisement had been published from time to time for the recruitment of Primary Teachers by various District Panchayat and Authorized Municipalities in the State uptill now. But, therein, the candidates belonging to S.T. holding qualification of a trainee as per Recruitment Rules of the post of Primary Teacher cannot be availed. The numbers of posts of backlog reserved for S.T. are about 4900 (Four thousand nine hundred). In such circumstances, as without granting relaxation in norms of qualification in the recruitment rules of the post of primary teacher, there is no any possibility of completion of backlog of reserved posts of S.C. in near future, by granting relaxation in the norms of qualification in connection with Rule 4 of Recruitment Rules of the post of Primary Teacher, it was under consideration of the Government to fill up the aforesaid 4900 post of primary teachers from the trainee candidates having the qualification of S.S.C. belonging to S.T. After careful consideration, it is hereby instructed to fill up about 4900 post of primary teacher being unfilled post of ST in various District Panchayat/Authorized Municipalities from only untrained candidates having qualification of SSC belonging ST, as a special case, subject to the following conditions:

(1) Such candidates having qualification of SSC shall be appointed as untrained teachers on the basis of merits of percentages obtained in their SSC examinations. If the candidates having qualification of SSC and CP Ed. are available, they shall be appointed on priority basis.

(2) The selected candidates shall have to furnish undertaking and bond of Rs. 10,000/- for discharging duty at one place for five years.

(3) The selected candidates shall have to undergo the training at their own cost, subject to the conditions which may be imposed for training and after passing the examination on completion of their training, they shall be appointed as a Primary Teacher on regular basis. Such candidates shall be availed only one opportunity of training. The candidates shall be discharged from service who do not attend the training or who do not complete the training. The candidate who fails in the examination held at the end of the training, shall have to pass the examination in the admissible trial as per rules, despite this, if they fail in the examination, they shall be discharged from the service.

(4) The entire services prior to the regular appointment after passing the examination at the end of training shall be considered ad-hoc service and the said period shall not be reckoned in service for the purpose of pay, seniority etc. and the salary of untrained teacher shall be paid for this period.

(5) The service condition should be clearly mentioned in the appointment letter of the candidate and consent of the candidates in respect of discharging duty on the said condition should be obtained.

(6) At the time of recruitment, other directives issued vide Circular No. PRE/1183/k dated 14.07.1983 and Corrigendum No. PRE/1183/2417/K dated 17.11.1983 of the Education Department shall have to be followed.

(7) The Director of Primary Education shall have to make the arrangement of training of such untrained candidates by obtaining information from the concerned District Education Committee/Town Primary Education Committee.

2. This issues with the concurrence of G.A.D. vide their note dated 17.11.1989 and Panchayat and Rural Housing Department vide their note dated 21.11.1989 on this Department file even number.

9. In pursuance of the aforesaid Circular, the Government issued advertisement for filling the backlog vacancies of Schedule Tribe candidates. But this circular does not mention how the figure of 4900 backlog vacancies have been arrived at. The circular mentions that Schedule Tribe vacancies could not be filled in pursuance of the advertisement as sufficient number of candidates were not available, but the circular does not specify that in which advertisement, how many vacancies could not be filled from Schedule Tribe candidates. The circular was required to state clearly that in pursuance of which particular advertisement, how many posts of Schedule Tribe candidates were advertised and how many vacancies under that advertisement remained unfilled. The unfilled vacancies which could not be filled in pursuance of the advertisement would constitute backlog vacancies. But a vacancy which has not been advertised cannot be treated to be a backlog vacancy. The mere mention of the fact that the advertisement had been issued from time to time was not sufficient. The details of the backlog vacancies, number of vacancies in each advertisement which could not be filled has to be stated clearly in the circular and only then, the Respondents can proceed to fill the backlog vacancies. The law in this regard has clearly been explained by the Apex Court in State of U.P. v. Sangam Nath Pandey and Ors. (2011) 2 SCC 105 in paragraph 33 as under:

...that only those vacancies can be declared backlog vacancies, within the reserved category, which were subject matter of advertisement but remained unfilled because of non-availability of suitable candidates, within the reserved category, after selection. It is only in respect of such vacancy that the procedure qua backlog vacancy can be adopted. Any vacancy, which has not been subjected to a complete process of selection, even though vacant, cannot be treated as a backlog vacancy.

10. When the present group of petitions were heard by us, it transpired that vacancies were filled to clear backlog quota of the Primary School Teachers of Schedule Tribe candidates. Therefore, this Court made a query on 06.04.2011 asking the Petitioners as well as the Respondents to disclose as to how this backlog vacancies have been arrived at and under which advertisement, the backlog vacancies could not be filled which has created the backlog. The order dated 06.04.2011 passed by this Court is extracted below:

Heard Mr R.D. Dave, learned Counsel for the Appellants, Mr. R.A. Mishra, learned Counsel for the Respondent No. 2 and Mr. N.J. Shah, learned AGP for the Respondents No. 1 and 3. The learned Counsel for the parties are directed to file an affidavit clearly mentioning that from where these 490 vacancies of Scheduled Tribes were made available for recruitment, how these vacancies were backlog vacancies as to whether any earlier advertisement had taken place in which these vacancies remained unfilled due to which they were called backlog vacancies and how the Respondents have arrived at the conclusion that these are backlog vacancies to be filled by special drive from amongst the Scheduled Tribes. Detailed affidavit along with necessary Annexures shall be filed by the Respondents within three weeks. List these matters on 27.4.2011.

11. Another order was passed on 27.04.2011 by this Court which is extracted below:

As a last opportunity, one week's time and no more time is allowed to learned Counsel Mr. R.A. Mishra for Respondent No. 1 and learned Assistant Government Pleader Mr. N.J. Shah for Respondent Nos. 1 and 3 to file additional affidavit along with advertisement, if any, which has resulted in backlog of vacancies. Put up on 06th May, 2011.

12. Inspite of these orders, neither the Petitioners nor learned Assistant Government Pleader have been able to explain or produce as to how this backlog vacancies have been arrived at. The vacancies were subject matter of which advertisement, which could not be filled, which had resulted in backlog vacancies.

13. The argument of learned Counsel for the Appellants that the decision in Manat Khemraj Somaji (Supra) dated 27.12.2000 was not considered by the Learned Single Judge which decided Special Civil Application No. 18219 of 2003 is not correct. The decision was considered by the Learned Single Judge. We could not persuade ourselves to agree with the decision in Manat Khemraj Somaji (Supra) and according to us, it does not lay down the correct law on the facts and it is overruled. We agree with the view taken by the learned Single Judge in Palas Prabhatsinh Mohansinh (Supra) decided on 01.10.2004 and in Dilipbhai Rameshbhai Jain v. junagadh District Panchayat and Anr. in Special Civil Application No. 10373 of 1995 decided on 13.05.2010.

14. Therefore, in our opinion, it is expedient to direct the State Government to find out, by issuing a new circular stating clearly therein that, as to how backlog vacancies of 469 has been arrived at, they were subject matter of which advertisement and how many vacancies in that advertisement were filled and how many vacancies could not be filled which has resulted in backlog vacancies. This entire exercise shall be completed by the State Government within a period of four months from the date on which copy of this order is produced before the State Government. If the State Government comes to the conclusion that 469 backlog vacancies were found in violation of the decision of the Apex Court referred to hereinabove, then they will find out the correct number of vacancies which are to be filled from amongst the Schedule Tribe candidates and the same shall be advertised in accordance with law and recruitment shall be made of Primary School Teachers.

15. In Manat Khemraj Somaji (Supra), the learned Single Judge has noted down details of mass irregularities and illegalities committed in the selection but has set aside the termination order on the ground of right to livelihood guaranteed under Article 21 of the Constitution of India and on principles of natural justice holding therein that the Petitioners were required to be afforded an opportunity of hearing prior to passing of the termination order. In our opinion, where the entire process of selection is vitiated on the ground of mass irregularities and illegalities pointed out by the selection committee in appointment of Primary School Teachers who have not even applied in pursuance of the recruitment and the candidates who were not eligible in terms of the advertisement had been selected. Such candidates do not deserve any sympathy of the Court and the selection made by the District Primary Education Committee deserve to be set aside. We find ourselves unable to persuade ourselves to agree with the decision taken by the learned Single Judge in view of mass irregularities and illegalities, in the selection process.

16. Since the Petitioners were appointed in the year 1991, most of them have now become over-aged. If the State Government holds fresh selection by issuing a fresh advertisement, age relaxation shall be granted to these Petitioners who have been selected and whose appointments have been cancelled, provided they are otherwise eligible, so that they may appear in the next selection which is to be held by the State Government as per the above directions.

17. We further add that before proceeding to hold fresh selection, the State Government shall issue a new circular by clearly spelling out therein number of vacancies, how many vacancies of Schedule Tribes were advertised, how many Schedule Tribes candidates were appointed and how many vacancies could not be filled in that selection and whether those vacancies were carried forward in the next selection and again re-advertised and how this backlog vacancies have been worked out by the State Government shall be clearly explained in the fresh circular to be passed by the Respondents before they proceed to hold fresh selection with regard to fill 469 posts or such number of posts which is required to be filled from amongst the Schedule Tribe candidates.

18. Subject to the above directions, we do not find any merit in these appeals. These appeals fail and are accordingly dismissed. Rule discharged.

19. In view of dismissal of appeals, no orders are required to be passed in the Civil Applications and the same are accordingly dismissed. Direct service is permitted.