

(2003) 03 BOM CK 0130

Bombay High Court (Nagpur Bench)

Case No: Writ Petition No's. 2387 of 1985 and 137 of 1986

Anil Dattatraya Ade

APPELLANT

Vs

Presiding Officer, School
Tribunal, Geetadevi Khandelwal
Institute of Pharmacy and State
of Maharashtra
 Laxmikant
Balkrishna Joshi Vs Shikshan
Prasarak Mandal, The Principal,
Geetadevi Khandelwal Institute
of Pharmacy, The Chairman,
Governing body of Geetadevi
Khandelwal Institute of
Pharmacy, The Director,
Directorate of Technical
Education, Shyam Jasrupchandji
Chandak, Principal, Geetadevi
Khandelwal Institute of
Pharmacy and State of
Maharashtra

RESPONDENT

Date of Decision: March 13, 2003

Acts Referred:

- Constitution of India, 1950 - Article 245, 246, 254, 254(1)
- Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 - Section 2, 2(20), 2(24), 9

Citation: (2003) 3 BomCR 465 : (2003) 2 MhLj 316

Hon'ble Judges: C.K. Thakker, C.J; S.G. Mahajan, J; P.S. Brahme, J

Bench: Full Bench

Advocate: R.K. Deshpande and Uday Dastane, for the Appellant; M.G. Bhangde, for respondent Nos. 2 and 3, Bhushan Gavai, Government Pleader, Sumant Y. Deopujari, Assistant Government Pleader, for respondent Nos. 4 and 6 and V.P. Panpallia, for the Respondent

Judgement

C.K. Thakker, C.J.

Both these petitions have been placed before us pursuant to an order passed by the Division Bench (Coram: R.K. Batta & J.P. Devadhar, JJ.) on April 16, 2002.

2. Dealing with the questions raised in the above petitions as also in other matters, and after hearing the "learned advocates for the parties at length", the Division Bench felt that prima facie contradictory views had been expressed in some of the decisions as to whether the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (hereinafter referred to as "the Act"), would or would not apply to Polytechnic institution, which is a technical institution. The Division Bench observed that the question raised before it related Pharmacy institution, which was also a technical institution. There was also a controversy as to whether the Maharashtra Employees of Private Schools (Conditions of Service) Regulation (Amendment) Act, 1990 (Maharashtra Act No. XXXII of 1990), was declaratory in nature so as to have retrospective operation.

3. Whereas in P.D. Prabhudesai v. Principal, M.T.E. Societies Walchand College of Engineering, Vishrambaug at Sangli (Writ Petition No. 2719 of 1984) and Mohd. Israr Siddiqui v. Board of Technical Education through its Director and others (Writ Petition No. 1527 of 1987), it was held that the provisions of the Act would not apply to Polytechnic institutions, in Abdullah Jameel Ahmed Ansari and Ors. v. M.H. Saboo Siddik Polytechnic & Ors. (1996) 1 CLR 85, the Act was held applicable to such institutions.

4. The Division Bench proceeded to observe:

"Both the decisions do not consider the issue threadbare with reference to various provisions of law which have material bearing on the issue in question."

5. In view of apparently contradictory views held by different Division Benches and after considering relevant aspects, the Division Bench considered it proper and appropriate to refer the questions to a larger Bench.

6. The Division Bench noted that the Apex Court in Chairman, Prince Shivaji Maratha Boarding Houses and others v. Sandip Shivaji Rao Ghatage, (Civil Appeal No. 5359 of 1997) had considered the point followed by a single Judge of this Court in [Shikshan Mandal, throuhg its General Secretary and Another Vs. Presiding Officer School Tribunal and Others](#), . It was, however, observed that the question was considered in the light of amended provisions of the Act, whereas in the writ petitions, the question raised related to un-amended provisions of the Act. The ruling of the Apex Court, therefore, could not be attracted to the controversy in question. Accordingly, an order was passed directing the Registry to place the matters before the Hon"ble the Chief Justice for taking appropriate steps.

7. The following two questions were referred to by the Division Bench for consideration by the Larger Bench;

1. Whether the employees of Pharmacy institution are governed by the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977?

1. Whether the amendment by Maharashtra Act 32 of 1990 introduced on 6.12.1990 to the provisions of the said Act is declaratory in nature so as to have retrospective operation? To appreciate the controversy raised in the petitions, few relevant facts in the first petition (Writ Petition No. 137 of 1986) may now be noted.

8. According to the petitioner, he was appointed by respondent No. 2 institute as a Lecturer in Pharmacy by an order dated May 5, 1981 with effect from July 1, 1981. The said order is annexed to the petition at Annexure-A. Though the appointment was shown to be temporary for Academic Year 1981-82, it was stated that the petitioner will serve the institution at least for two years which would be the period of probation. Thus, the period of service started from July 1, 1981 and it was to come to an end on June 30, 1983. On April 22, 1983, i.e. before about two months of completion of period of probation, the Principal of the institute informed the petitioner (Annexure G-1) that his work was found to be satisfactory and he would be confirmed after completion of two years from the date of joining. Similarly, on April 29, 1983, the Principal issued a certificate in favour of the petitioner certifying that his teaching methods were satisfactory. The results obtained were also satisfactory. The behaviour of the petitioner was good. Surprisingly, however, vide a communication dated June 29, 1984, the Chairman, Governing Body of respondent No. 2, intimated the petitioner that he was working in the institution as a Lecturer on probation and the probationary period would be over on June 30, 1984. It was then stated :

"It is decided by the management not to continue your services and hence you are hereby informed that you are relieved from your services on 30-6-1984 afternoon."

9. A copy of the said order is annexed at Annexure-D. Being aggrieved by the order passed by the management, the petitioner approached the School Tribunal, Amravati Region, by filing Appeal No. 43 of 1984 u/s 9 of the Act. The Presiding Officer of the School Tribunal vide an order dated January 16, 1986 partly allowed the appeal filed by the petitioner holding that the order of termination was legal and valid, but the respondents were liable to pay one months salary (pay and allowances) in lieu of the notice. It was ordered that in case of failure on the part of the management in paying the said amount, the Government should deduct an equal amount from the grant-in-aid due and payable to the management and be paid to the petitioner.

10. One of the questions raised before the Tribunal was whether the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and the Maharashtra Employees of Private Schools (Conditions of Service)

Rules, 1981 (hereinafter referred to as "the Rules), would apply to employees of private schools. The Tribunal held that the provisions of the Act and the Rules were applied to Pharmacy Schools. In view of the above finding, the Tribunal negated the contention of the management that the Tribunal had no jurisdiction and accordingly the appeal was partly allowed.

11. Being aggrieved by the order passed by the Tribunal the petitioner has approached this court.

12. As already stated, at the time of hearing of the petition, the Division Bench was called upon to consider the question as to applicability of the Act and the jurisdiction of the Tribunal. The Bench noted that the view taken by this Court was not consistent. Whereas in some cases, the provisions of the Act were held inapplicable to technical institutions, contrary view was taken in other cases. The Bench, therefore, felt that the question needed to be decided by a larger Bench and that is how the matter is before us.

13. We have heard the learned counsel for the parties. The learned counsel for the petitioner submitted that the provisions of the Act and the Rules would apply to all private schools including Pharmacy schools. The Tribunal was, therefore, right in holding that it had jurisdiction to deal with and decide the appeal filed by the petitioner-appellant. The law laid down and observations made in P.D. Prabhudesai and Mohd. Israr Siddiqui do not lay down correct law and the view expressed in Abdullah Jameel Ahmed Ansari is correct. After considering P.D. Prabhudesai, the Division Bench rightly held in the latter case that P.D. Prabhudesai was decided on the basis of "misconception of facts". Since polytechnic institution is a private school and is recognized by the Director of Technical Education, it is governed by the provisions of the Act and the Rules.

14. The learned counsel also submitted that the Amendment Act XXXII of 1990 is merely "declaratory" or "clarificatory" in nature. It is settled law that such "declaratory" or "clarificatory" statutes are retrospective in operation as they merely declare and/or clarify what the law is as also what the law was when it was enacted. It neither creates nor extinguishes any right whatsoever. The provisions of the Act and the Rules would thus apply to the respondent-institute and the Tribunal was right in holding that it had jurisdiction. The learned counsel for the respondent management, on the other hand, contended that neither the provisions of the Act nor the provisions of Rules would apply to technical institutions. Pharmacy institutions are not governed by the Act and the Rules as they are governed by Pharmacy Act, 1948, as well as by the All India Council for Technical Education Act, 1987. The Tribunal, therefore, committed an error of law and of jurisdiction in holding that the Act would apply to respondent institution. It was also submitted that P.D. Prabhudesai and Mohd. Israr Siddiqui laid down the law correctly and ought to have been followed in Abdulla Jameel Ahmed Ansari. It was argued that earlier two cases were decided by two different Division Benches and it was not

open to a subsequent Division Bench to state that the Division Bench judgment in P.D. Prabhudesai was based on "misconception of fact" and did not lay down correct law. Even if the latter Division Bench felt and was prima facie satisfied that P.D. Prabhudesai was not correctly decided, the only course open was, to refer the matter to a larger Bench. Hence, Abdulla Jameel Ahmed Ansari deserves to be over-ruled. The counsel also contended that the correctness of the law laid down by this Court in P.D. Prabhudesai as well as Mohd. Israr Siddiqui was never questioned by any party by approaching the Supreme Court. It was, therefore, final and binding, so far as this Court is concerned. In the circumstances, the Tribunal ought to have held that it had no jurisdiction u/s 9 of the Act and ought to have dismissed the appeal.

15. It was also urged that keeping in mind P.D. Prabhudesai and Mohd. Israr Siddiqui that the provisions of the Act and the Rules would not apply to technical institutions, the Legislature thought it appropriate to amend the law and hence, an amendment was made by Maharashtra Act XXXII of 1990 which goes to show that the Act was not applicable to technical institutions prior to the amendment. By no stretch of imagination, such amendment can be said to be declaratory or clarificatory. It was a substantive provision which had been introduced for the first time. It is settled principle of law that an amendment creating or extinguishing rights is prospective and would not affect rights and liabilities already accrued prior to such amendment. Since in the present case, the dispute pertains to 1983-84, the Amendment Act would not apply and the petitioner is not entitled to any relief on that count.

16. Alternatively, it was submitted by the learned counsel for the management that in the light of the provisions of Part-XI of the Constitution and particularly Articles 245, 246 and 254 thereof read with Schedule VII, it is Parliament which has power to make laws on certain subjects. Entry 66 of List-I (Union List) deals with standards of higher education in technical institutions. Only Parliament is competent to enact a law in that field. But even if it is assumed that under Entries 23 and 25 of List-III (Concurrent List) dealing with employment and unemployment as also education, the State Legislature has also power to enact laws, such power is subject to the limitation under Article 254 of the Constitution. In case of repugnancy between the two, i.e. between an Act of Parliament, and an Act of State Legislature, the former would prevail and the law made by the Legislature of a State shall, to the extent of repugnancy, be declared void and ineffective. Since Pharmacy institutions are established and governed by the provisions of an Act enacted by Parliament, in case of inconsistency between the Central Act and the State Act, to the extent of inconsistency or repugnancy, the Act of Parliament will operate and the Act of State Legislature would have to be held inoperative.

17. So far as State Government is concerned, it is no doubt true that two affidavits have been filed, one by the Director of Technical Education and the other by the

Assistant Director of Technical Education. In the affidavit in reply filed by the Director of Technical Education, Mumbai, it was stated that the provisions of the Act and Rules are not applicable to Diploma in Pharmacy. Similar view was expressed in the second affidavit.

18. At the time of hearing of the petitions, however, the learned Government Pleader specifically and expressly stated at the Bar that it was the personal view of deponents. The stand of the State Government is that the provisions of the Act and the Rules apply to private Pharmacy institutions and other technical Institutions. He also expressly stated that the amendment in the Act on December 16, 1990 by Act No. XXXII of 1990 was merely declaratory or clarificatory in nature. It has, therefore, retrospective effect.

19. The questions for consideration before the larger Bench are:

1. Whether the provisions of the Act and the Rules would apply to Pharmacy Schools and other technical institutions?;
2. Whether the Amendment Act of 1990 is declaratory and/or clarificatory in nature and has retrospective operation?; and
3. Whether there is inconsistency between Central Act and State Act and whether the State Act is void and inoperative to the extent of so-called inconsistency or repugnancy?

20. Before we may proceed to deal with the rival contentions of the parties, it is necessary to consider the relevant provisions of the Act. The Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (Maharashtra Act III of 1978) was enacted by the State Legislature.

21. The preamble of the Act reads thus;

" WHEREAS, it is expedient to regulate the recruitment and conditions of service of employees in certain private schools in the State, with a view to providing such employees security and stability of service to enable them to discharge their duties towards the pupils and their guardians in particular, and the institution and the society in general, effectively and efficiently;

AND WHEREAS, it is further expedient in the public interest to lay down the duties and functions of such employees with a view to ensuring that they become accountable to the Management and contribute their mite for improving the standard of education;

AND WHEREAS, it is also necessary to make certain supplemental, incidental and consequential provisions; It is hereby enacted in the Twenty-eighth year of the Republic of India as follows:"

22. The Act was to come in force on such date as the State Government might by Notification in the Official Gazette, to appoint. It is not in dispute that the Act came into force with effect from July 15, 1981 which was "appointed date" as defined in clause (1) of Section 2. Clause (6) of Section 2 defines "Director" and it reads thus:

"Director" means the Director of Education or the Director of Technical education, as the case may be, appointed as such by the State Government."

"Employee" is defined as any member of teaching and non-teaching staff of a recognized school. "Management" is defined in clause (12) thus;

"Management" in relation to a school, means:-

in the case of a school administered by the State Government, the Department;

in the case of a school administered by a local authority, that local authority; and

in any other case, the person or body of persons, whether incorporated or not and by whatever name called, administering such school".

23. The terms "private school" and "school" have been defined in clauses (20) and (24) of Section 2 respectively and they read as under:

" (20) "private school" means a recognized school established or administered by a Management, other than the Government or a local authority"

(24) "school" means a primary school, secondary school, or higher secondary school, or any part of any such school, a Junior College of Education, or any other institution or part thereof which imparts education or training below the degree level including any institution which imparts technical or vocational education."

The term "recognized" is defined in clause (21) of Section 2 as recognized by the Director or an officer authorized by him or by the State Board.

24. Section 3 declares that the provisions of the Act "shall apply to all private schools in the State of Maharashtra", whether receiving any gratin-aid from the State Government or not. Section 4 prescribes terms and conditions of service of employees of private schools. Section 5 lays down obligations of management of private schools. Section 8 requires the State Government to constitute one or more Tribunals to be called "School Tribunals" and defines jurisdiction of each Tribunal. Section 9 confers right of appeal to Tribunal by employees of private schools. Section 10 deals with powers and procedure of the Tribunal. u/s 11, the Tribunal can issue directions and grant appropriate relief to the persons aggrieved. Section 12 makes the decision of the Tribunal final and binding. Section 13 imposes penalty on management for failure to comply with Tribunals order. u/s 16, the State Government is empowered to make Rules for carrying out the purposes of the Act.

25. In exercise of the powers conferred under the Act, the State of Maharashtra framed Rules known as "The Maharashtra Employees of Private Schools (Conditions

of Service) Regulation Rules, 1981 (hereinafter referred to as "the Rules"). They, inter alia, provide qualifications, appointment of teaching staff, maintenance of seniority list and other matters connected with service conditions of employees. They also lay down procedure for holding inquiries and imposition of penalties.

26. The Pharmacy Act, 1948, has been enacted "to make better provision for the regulation of the profession and practice of pharmacy" and to constitute Pharmacy Councils for the said purpose. It provides for constitution of Pharmacy Council in India as also State Pharmacy Councils. Section 46 enables the State Government to make Rules to carry out the purposes of Chapters III, IV and V of the Act. Section 10 empowers the Central Council, subject to the approval of the Central Government, to make Regulations prescribing minimum standard of education required for qualification as a Pharmacist. In exercise of the said power, the Pharmacy Council of India framed Regulations called "The Education Regulations, 1981". They deal with Diploma in Pharmacy, minimum qualifications for admission, duration of course, training, examination, marks for passing standard, etc .

27. Whether technical institutions would fall within the provisions of the Act and whether School Tribunals had jurisdiction to deal with such disputes came up for consideration before this Court in P.D. Prabhudesai (Writ Petition No. 2719 of 1984) decided on 20th October, 1986. The petitioner was working as a Foreman in Polytechnic Wing of Walchand College of Engineering, Sangli. When his services were terminated, he approached the School Tribunal, Pune, by filing an appeal under the Act. On behalf of the respondents, it was contended that the School Tribunal had no jurisdiction to entertain, deal with and decide the appeal, as the provisions of the Act would not apply to Polytechnics. The Tribunal upheld the preliminary objection and concluded that the provisions of the Act would not apply to Polytechnics and, hence, the Tribunal had no jurisdiction.

28. The aggrieved appellant approached this Court. It was contended on behalf of the petitioner that the Tribunal had committed jurisdictional error in holding that the Act would not apply and the appeal filed by the appellant was not maintainable. The Division Bench of this Court observed that the Tribunal was right in coming to the conclusion that it had no jurisdiction as " a Polytechnic is not a private school within the meaning assigned to the said expression of the Act is concerned". It proceeded to state that the provisions of the Act would apply only to the private schools in the State and not to a Polytechnic school as it could not be said to be private school within the meaning under the Act. It was further stated that the financial assistance was granted by the Union of India and the State Government on the specific condition that the Polytechnic should function in accordance with the instructions and recommendations of All India Council for Technical Education (AICTE). Moreover, the Governing Council was constituted for the institution as per the recommendations of AICTE. It was a wing of main Engineering College run by the trust, the Principal being the ex officio Principal and Secretary of Polytechnic.

The Governing Body consisted of members who were nominated by the Government of India and AICTE.

29. The Court also took into account an affidavit in reply filed on behalf of the State of Maharashtra wherein it was stated that the Government did not have any intention that the Act and the Rules apply to private Polytechnics considering difference in the set up in the private Polytechnics as compared to private primary/secondary schools. It was, however, stated in the counter:

" The doubt was created because of the definition contained in the section 2 (24) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act , 1977. It is possible to construe the said definition as covering the institutions conducting diploma and technology courses below the degree level."

The Court then made the following observation:

"It also appears to be an admitted position that the Secondary Schools Code does not apply to polytechnics."

30. The Court also considered the Preamble of the Act, certain definitions and held that unless a person was an employee of a private school, he had no right to file an appeal u/s 9. The Tribunal was, therefore, wholly right in coming to the conclusion that it had no jurisdiction to entertain the Appeal.

31. The Court noted that the view which had been taken by the Tribunal and upheld by the Court would result in serious prejudice to employees of such schools. Their rights would be jeopardized but the legislation should be interpreted as it is and the Court cannot enact or legislate. If the language of the Act is unambiguous and clear, effect has to be given to it. The Court further observed that even if it is assumed that Polytechnic is a school, it cannot be said that to be a private school as defined in Section 2 (20) of the Act and the provisions of the Act, therefore, could not be invoked. In Mohd. Israr Siddique, (Writ Petition No. 1527 of 1987) decided on November 30, 1990, a similar question came up for consideration before another Division Bench. The petitioner, who was appointed as a Lecturer in Vivekanand Polytechnic School and relieved from service, approached this Court contending that the action taken against him was illegal and unlawful. He relied upon the provisions of the Bombay Civil Services Rules as also the provisions of the Act and the Rules. Dismissing the petition, this Court observed that nothing had been pointed out to the Court as to how the provisions of the Bombay Civil Services Rules or of Act or of the School Code were made applicable to respondent-institute. In absence of any Resolution or statutory Rule, the petitioner could not claim protection thereunder. The petition was, therefore, dismissed.

32. In Abdullah Jameel Ahmed Ansari, however, a similar question came up for consideration before still another Division Bench. Services of certain employees who were employed by Polytechnic institute came to be terminated. When appeals came

up for hearing before the School Tribunal, it was contended that the respondent being Polytechnic institute, was not governed by the provisions of the Act and the School Tribunal had no jurisdiction to entertain them. Reliance was placed on P.D. Prabhudesai. The contention was upheld and the appeals were dismissed. The aggrieved appellants approached this Court.

33. The Division Bench conceded that in P.D. Prabhudesai, a Division Bench held that Polytechnic institutions were not governed by the provisions of the Act but proceeded to observe that the said judgment proceeded upon either a misstatement of fact or misconception of fact and did not lay down correct law.

The Court also quoted the following statement appearing in P.D. Prabhudesai;

" Admittedly, polytechnics are not recognized by the Director of Education or the officer authorized by him, nor by the State Board."

34. According to the Court, the learned counsel for the petitioner was right in contending that the correct position was otherwise. Then referring to definitions of "private school" in Section 2 (20), "recognized" in Section 2 (21) and "school" in Section 2 (24), the Division Bench held that the whole basis of the judgment in P.D. Prabhudesai was so-called "admitted position". The Court noted that the learned Assistant Government Pleader, stated that the statement in P.D. Prabhudesai that "admittedly" Polytechnics were neither recognized by the Director of Education or the Officer authorized by him nor by the State Board was factually incorrect. It was stated by her, after taking instructions from the Director of Technical Education, Maharashtra State, that, as a matter of fact, Polytechnics were the institutions recognized by respondent No. 4 i.e. Director of Technical Education. The Court also proceeded to observe that, apart from the concession made by the learned Assistant Government Pleader, the learned counsel for the petitioner was right in submitting that the institution was recognized by respondent No. 4. It was, therefore, clearly covered by the expression "private school", and hence within the ambit of the operation of the Act. The Tribunal, therefore, was clearly in error in holding that it had no jurisdiction.

35. In the circumstances, the Court stated;

" [T]hat judgment, (P.D. Prabhudesai) in our opinion, cannot be said to be laying down the correct proposition of law that the polytechnics are not governed by the aforesaid Act for it has proceeded upon the misconception of fact, as indicated hereinabove."

Since the Tribunal dismissed the appeals only on the ground of jurisdiction and had not entered into merits of the matter, while allowing the petitions, the Court remitted the matters back to the Tribunal for deciding them in accordance with law.

36. It appears that keeping in mind the decision of the Division Bench in P.D. Prabhudesai, the Legislature thought it fit to amend the 1977 Act. In statement of

Objects and Reasons for amending the Act of 1977, it was observed;

"The Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 is enacted to regulate recruitment and conditions of service of employees in certain private schools. The expression "school" as defined in section 2 (24) meant a primary school, secondary school, or higher secondary school or any part of any such school, a junior college of education, or any other institution or part thereof which imparts education or training below the degree level including any institution which imparts technical or vocational education. In Writ Petition No. 2719 of 1984 (Shri P.D. Prabhudesai versus the Principal, M.T.E. Societys Walchand College of Engineering, Vishrambaug at Sangli), it was contended that polytechnic, an institute which imparts technical education upto a diploma level is not covered within the definition of the expression "school" and therefore the School Tribunal constituted under the Act had no jurisdiction to adjudicate the dispute raised by a teacher of a polytechnic. The Division Bench of the Bombay High Court had upheld this contention and observed that by merely interpretative process it was not possible for the court to confer jurisdiction upon the School Tribunal, where it had none under the Act. Government therefore, considered it expedient to amend the definition of the expression "school" so as to cover all technical and non-technical schools, junior colleges and institutes which impart general, technical, vocational, art or, as the case may be, special education or training in any faculty or discipline or subject below the degree level.

Opportunity was also taken to amend certain other definitions or sections of the Act, which were found necessary or were consequential or incidental.

The Act seeks further to amend the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, to achieve the abovementioned objectives."

37. It was then stated that Section 2 of 1977 Act was required to be amended with a view "to cover all technical and non-technical schools, junior colleges and institutes" which were imparting education or training in any faculty or discipline or subject below the degree level". Accordingly, Maharashtra Act XXXII of 1990 was passed by the Legislature. Clauses (21), (24) and (25) of Section 2 were substituted by 1990 Amendment. Other amendments were also made.

38. We may at this stage take note of two subsequent decisions, one by the Apex Court and the other by a single Judge of this Court. In *Chairman, Prince Shivaji Maratha Boarding House and Others v. Sandeep Shivaji Rao Ghatage and Ors.* (Civil Appeal No. 5359 of 1997) decided on August 4, 1997, the Supreme Court held that the Act would apply to the teachers of Polytechnic institutes. Considering Section 2 (24) of the Act which defines "school" as inclusive of any institution imparting technical or vocational education, the Apex Court held that the provisions of the Act would apply to such schools.

39. A single Judge of this Court in [Shikshan Mandal, through its General Secretary and Another Vs. Presiding Officer School Tribunal and Others](#), held that a Polytechnic institution is covered by the expression "school" within the meaning of Section 2 (24) of the Act, and hence, is subject to the jurisdiction of the School Tribunal u/s 9 of the Act. The learned single Judge for taking such view relied upon Sandeep Shivaji Rao Ghatage.

40. The learned counsel for the respondent-management, however, is right in submitting that both the above decisions have not direct bearing on the point inasmuch as they were decided after the Amendment Act of 1990 and the impugned actions taken in the present petitions were prior to the said amendment.

Even the Division Bench while making reference to a larger Bench was conscious of the above position and has observed that the ruling of the Supreme Court would not be attracted to the controversy in question.

41. Looking to the statutory provisions, however, it is clear to us that the Act of 1977, as originally stood, applied to all "private schools" in the State of Maharashtra, whether or not receiving any grant-in-aid from the State Government. The expression "private school" was defined as "a recognized school established or administered by a management other than the Government or local authority". It is not even the case of the respondents that the schools run by them were either established or administered by Government or a local authority. Hence, they were private schools within the meaning of Section 2 (20) of the Act.

42. In our judgment, clause (24) of Section 2 is very important and material. It defines "school", which imparts inter alia technical education. It thus expressly and unequivocally covers all institutions imparting technical education. There is, therefore, no doubt in our minds that Pharmacy institute with which we are concerned in the present petitions would be included in the definition "school" u/s 2 (24) of the Act. To us, it is further clear that the term "Director" as defined in Section 2 (6) would mean the Director of Education or Director of Technical Education, as the case may be, appointed by the State Government.

43. In the instant case, it is the assertion of the petitioner that the respondent school is recognized by the Director of Technical Education. It has also been the stand taken by the learned Government Pleader. Though the respondent management has denied the above assertion, looking to the documentary evidence on record, it is proved that the school has been recognised by the Director of Technical Education. From communications dated January 1, 1980, February 13, 1980 and June 17, 1980 by the Director of Technical Education to the Secretary of respondent Mandal, this is clear. It is also clear from similar communications sent to other institutions. It is, therefore, established that the respondent-institute has been recognized by the Director of Technical Education. The provisions of the Act, therefore, would apply to the respondent-school. If it is so, obviously, the Tribunal has jurisdiction to try, deal

with and decide the questions under the Act. It, therefore, cannot be said that the Tribunal had committed any error of law or jurisdiction in entertaining and deciding the appeal filed by the present petitioner.

44. We are further of the view that the law laid down by this Court in P.D. Prabhudesai and Mohd. Israr Siddique did not lay down law correctly for more than one reason. P.D. Prabhudesai proceeded on the basis of so called "admitted position" which is clear from the following statement:

" It also appears to be an admitted position that the Secondary Schools Code does not apply to Polytechnics."

As observed in Abdullah Jameel Ahmed Ansari, the above statement was factually incorrect.

45. Moreover, in P.D. Prabhudesai, the Court referred to the affidavit in reply on behalf of the State that the Government had no intention to apply the provisions of the Act and the Rules to private Polytechnics taking into consideration the difference in the set up in private Polytechnics compared to private primary/secondary schools. A similar stand has been taken in the present petition (Writ Petition No. 137 of 1986). The Director of Technical Education, Mumbai has stated;

"Further it is submitted that the rules and regulation laid down in Maharashtra Employees of Private Schools (Conditions of service) Regulation Act, 1977 (M.E.P.S. 1977) and the rules 1981 are not applicable to the diploma in pharmacy as the nature of working is different"

46. It was also submitted that Pharmacy institutions do not fulfil criteria of private schools and as such, MEPS Rules are not applicable to those institutions. According to the deponent, at present there are no separate Act or Rules for employees of Diploma in Pharmacy institutions but the work of framing the Act and Rules for such institutions in the State of Maharashtra has already been undertaken and is in progress. Again, Maharashtra Civil Services Rules are made partly applicable to those institutions. The Government of Maharashtra has taken a decision to formulate separate enactment along with regulations for regulating the services of employees of private Polytechnic and Pharmacy institutions vide a letter dated 2nd February, 1994 and the process to formulate such enactment is in progress. The letter dated 2nd February, 1994 is also annexed to the affidavit in reply filed by the Director of Technical Education. Thus, according to the deponent, the provisions of the Act and Rules do not apply to technical institutions. The learned Counsel for the respondent-institutions has strongly relied upon the above affidavit and the stand taken by the Director of Education. In our opinion, however, two things must be kept in mind. Firstly, as already stated earlier, the learned Government Pleader expressly and unequivocally stated that this is not the view of the State Government and the affidavits filed by the Director or Deputy Director of Technical Education must be treated as their view point on the question. The learned Government

Pleader further stated that according to the Government, the provisions of the Act would apply to all private schools as defined in Section 2 (20) read with 2 (24) of the Act which would cover institutions imparting technical and vocational education. Polytechnic and Pharmacy institutions impart technical education, and hence they are covered by the Act.

47. But, even otherwise, in our judgment, whether or not an Act would apply to a particular institution would depend upon the interpretation of the relevant provisions of law. This is exclusively a judicial function and expression of opinion by the petitioner, by the respondent or by the State Government is immaterial and cannot bind the Court. If on proper interpretation, the Court feels that the provisions of the Act would apply to a particular institution, opinion by any authority that the provisions would not apply does not alter the legal position. If, on the other hand, the provisions would not apply, they cannot be made applicable on the ground that according to the authority, the provisions of the Act are applicable.

To us, it is abundantly clear that all schools imparting education or training below degree level including institutions imparting technical or vocational education recognized by the Director of Education or Director of Technical Education falling within the category of private schools are governed by the provisions of the Act and the Rules. Pharmacy schools, with which we are concerned in the present group of petitions, are such schools, and hence the Act and the Rules apply to them. No doubt, in P.D. Prabhudesai and Mohd. Israr Siddique, a contrary view has been taken by two different Benches but, as rightly contended by the learned counsel for the petitioner, P.D. Prabhudesai proceeded on so-called "admitted position" which was not factually correct. Reliance was also placed on the affidavit in reply filed on behalf of the State Government but, as already indicated, even if it is assumed that the State Government "admitted" that the provisions of the Act would not apply to technical institutions or to that effect a counter was filed, it would not alter legal position. Reading the relevant provisions of the Act and the Rules in their proper perspective leaves no room of doubt that Polytechnic institutions would fall within the ambit and scope of the provisions of the Act and Rules and the decision in P.D. Prabhudesai did not lay down the law correctly. We, therefore, over rule P.D. Prabhudesai.

48. In Mohd. Israr Siddique, no reasons at all have been recorded by the Division Bench as to why the provisions of the Act would not apply to Polytechnics. The Court proceeded on the footing by observing that nothing was pointed out by the petitioner to show that the Government by any resolution or by any statutory rule applied the Act to respondent society either in the matter of conditions of service of the staff or as regards resignation or its acceptance. In the opinion of the Division Bench, in absence of Government Resolution or statutory rules, the Act would not apply.

49. With respect, the approach is fallacious. In our opinion, the Court has to consider the provisions of the Act and the Rules and to decide whether those provisions would apply to technical institutions. If on the basis of the relevant provisions and interpretation thereof, the provisions would apply to technical institutions, there was no scope of further inquiry and the law has to be implemented. It is only when the Court comes to the conclusion and records a finding that the provisions of the Act would not apply that a further inquiry has to be made whether those provisions were made applicable by the State Government by making any Resolution or issuing any Circular to that effect. In Mohd. Israr Siddiqui, the Court proceeded on a footing which was not permissible in law inasmuch as without recording a finding and coming to the conclusion that the provisions of the Act would not apply, it observed that nothing was shown by the learned Counsel for the petitioner as to how the provisions of the Act and the Rules were made applicable. To us, therefore, even Mohd. Israr Siddique also cannot be said to be in consonance with law and deserves to be overruled and we accordingly over rule it.

50. In our judgment, the statement of law by a Division Bench of this Court in Abdulla Jameel Ahmed Ansari lays down correct proposition of law. It is no doubt true, as contended by the learned counsel for the respondent management, and we are in agreement to the extent, that in view of the decision of the Division bench in P.D. Prabhudesai, the subsequent Division Bench was not right in observing that P.D. Prabhudesai did not lay down correct proposition of law. It was expected of the Division Bench either to follow the ratio laid down in P.D. Prabhudesai or if it was of the opinion that P.D. Prabhudesai proceeded on "misconception of facts" or "misstatement of fact" it ought to have referred the matter to a larger Bench. Precisely, keeping this legal position in mind, the Division Bench in the present group of petitions thought it proper to refer the matter to a larger Bench. Since, we are of the view that the decision rendered in Abdulla Jameel Ahmed Ansari is correct, we approve the same by over-ruling previous decisions.

51. We accordingly answer issue No. 1 in the affirmative and hold that the employees of Pharmacy institutions are governed by the Maharashtra Employees of Private Schools (Condition of Service) Regulation Act, 1977, and the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981.

52. The second question which the Division Bench was called upon to consider was whether the Amendment Act of 1990 (Act XXXII of 1990) was declaratory and/or clarificatory in nature so as to have retrospective operation. The learned counsel for the respondent institution vehemently contended that the provisions of the Act were not applicable to technical institutions. Some the aggrieved employees of such institutions approached School Tribunals against actions taken by those institutions. In response to the notices issued by Tribunals, managements appeared and contended that the technical institutions were not covered by the provisions of the Act and hence Tribunal had no jurisdiction. In some cases, affidavits in reply were

filed on behalf of the Government, supporting the management. Preliminary objection was, therefore, upheld by the Tribunal observing that technical institutions would not fall within the purview of the provisions of the Act and the Tribunal had no jurisdiction to try disputes of the employees of technical institutions. This court had also taken a similar view in some cases. The counsel submitted that in P.D. Prabhudesai and Mohd. Israr Siddiqui, such contention was upheld laying down a proposition of law that the provisions of the Act would not apply to Polytechnic institutions. It was thus settled legal position that the employees of technical institutions were not governed by the provisions of the Act. The counsel urged that keeping in mind the above legal position, the Legislature thought it fit to amend the relevant provisions of the Act and to include the employees of technical institutions under the Act. A Bill (L.C.Bill No. XXXIII of 1990) was prepared with a view to amend the Act, inter alia, observing that it was expedient to further amend the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977. In Statement of Objects and Reasons for amending the Act in 1990 (Maharashtra Act XXXII of 1990), a reference was made to a decision in P.D. Prabhudesai and it was indicated that the Government considered it expedient to amend the definition of the term "school" so as to cover all technical, vocational and all other special education or training institutions and to confer jurisdiction upon School Tribunal over those schools. It was, therefore, submitted that the amendment was substantive in nature and technical schools which were not within the purview of the provisions of the Act so far came to be included for the first time by the Amendment Act of 1990. Such amendment would create rights in favour of employees employed by technical institutions as also liabilities of technical institutions qua the employees employed by them by conferring jurisdiction on School Tribunals which was not there in the past before the amendment. Such amendment, therefore, must be held to be prospective in nature and the Tribunal would have jurisdiction only after the amendment in the Act i.e. from 1990. In the present case, the dispute had arisen prior to the amendment of the Act and hence the provisions of the Amendment Act would not apply.

53. The learned counsel for the petitioners submitted that definition of "school" u/s 2 (24) of the Act included any institution imparting "technical" education. It was, therefore, not necessary to amend the Act. Unfortunately, however, in P.D. Prabhudesai, it was erroneously observed by the Division Bench of this Court that it was an "admitted position" that the Act would not apply to Polytechnics. It was further unfortunate that the State Government in an affidavit in reply stated that it did not have any intention to make the provisions of the Act and Rules applicable to private polytechnics. That, however, could not and did not change the legal position. In view of specific and express provision of law, it was not open either to the Government or to the Court to hold that the provisions of the Act would not apply to technical institutions. In Mohd. Israr Siddiqui, no reasoning whatsoever had been given by the Division Bench for holding why the provisions of the Act were not

applicable. The approach in Mohd. Israr Siddiqui was clearly erroneous when it was observed that no Resolution was brought to the notice of the Court as to how the provisions of the Act were applicable to polytechnic institutions. When the definition of the term "school" was clear and it included technical institutions, nothing more in the form of Resolution or Circular was necessary to confer jurisdiction on Tribunals. In view of the decision of this Court in P.D. Prabhudesai, the Legislature thought it fit to "clarify" or "declare the law on the point, and the amendment was effected. Such declaratory or clarificatory statute neither creates right nor imposes obligation on any party. It merely declares or clarifies the legal position as it was when such statute had been enacted by a competent Legislature. Such statutes are always retrospective in operation and must be given effect from the date when the original Act was enacted.

In [The Central Bank of India Vs. Their Workmen](#), the Supreme Court quoted with approval the following statement of law from Craies on Statute Law;

" For modern purposes a declaratory Act may be defined as an Act to remove doubts existing as to the common law, or the meaning or effect of any statute. Such Acts are usually held to be retrospective. The usual reason for passing a declaratory Act is to set aside what Parliament deems to have been a judicial error, whether in the statement of the common law or in the interpretation of statutes. Usually, if not invariably, such an Act contains a preamble, and also the word "declared" as well as the word "enacted".

54. Drawing the distinction between a "declaratory Act" and "remedial Act", the Court proceeded to state that the former may be defined as an Act to remove doubts existing as to the legal position whereas the latter either enlarges or restricts the scope of the Act. The former is usually retrospective in its operation while the latter is prospective since it affects the rights of the parties.

55. In [Madras Marine and Co. Vs. State of Madras](#), referring to Central Bank of India, the Apex Court observed that whether a law is declaratory or not depends on the Act and the language used therein.

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57. In determining the nature of the Act, regard must be had to the substance rather than to the form of amendment. A declaratory, clarificatory or explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act (vide [Keshavlal Jethalal Shah Vs. Mohanlal Bhagwandas](#)

[and Another, ; Shyam Sunder and Another Vs. Ram Kumar and Another, \).](#)

58. In [Shri Chaman Singh and Another Vs. Srimathi Jaikaur, ,](#) it was held that it is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended. In [M/s. Punjab Traders and others Vs. State of Punjab Traders and others,](#) it was observed that an amendment Act may be purely clarificatory when it clears a meaning of the provisions of the principal Act which was already implicit therein.

59. As already observed by us hereinabove, in the statute, the term "school" had been defined in clause (24) of Section 2 which included technical institution. Nothing was, therefore, necessary for the application of the provisions of the Act to such institutions. It was because of the view, albeit erroneous, taken by this Court in P.D. Prabhudesai that the Legislature thought it fit to clarify the legal position and to clarify or to declare the law that the amendment was made. The Amendment Act neither created any right in favour of employees nor imposed liabilities on such institutions. The Amendment Act of 1990 must, therefore, be held to be clarificatory or declaratory, having retrospective operation.

60. We are, therefore, of the opinion that the contention on behalf of the management that the Act is substantive in nature and should be held to be prospective in operation has no force and must be negated. To us, the Amendment Act is clearly clarificatory and declaratory and it has merely declared and clarified the position which prevailed under the parent Act enacted in 1977. The second issue is accordingly decided against the management and in favour of the employees.

61. Finally, it was contended that the Pharmacy Act, 1948 is an Act enacted by Parliament and is covered by Entry 66 of List 1 of Seventh Schedule and the State Legislature has no legislative competence to enact a law by encroaching the field occupied by Parliament. But even if it is assumed that under List-III of the said Schedule, the State Legislature is competent to enact a law under Entry 23 (Social security and social insurance, employment and unemployment) and/or 25 (Education, including technical education, medical education and universities, subject to the provisions of Entries 63, 64, 65 and 66 of List 1; vocational and technical training of labour), there is inconsistency between the Act of Parliament and the Act of State Legislature, and under Article 254(1) of the Constitution, the State Act must be held to be void to the extent of inconsistency or repugnancy.

62. We must frankly admit that we are unable to uphold the contentions of the management. It is well established that the question of repugnancy between a law enacted by Parliament and by a State Legislature would arise only if both the legislations occupy the same field and operate simultaneously. Article 254(1) of the Constitution has no application if in pith and substance, the law enacted by a competent Legislature does not encroach upon the exclusive field occupied by the

other.

63. Whereas Entries 63 to 66 of List I provide for scientific and technical education and Entry 66 in particular deals with co-ordination and determination of standards for higher education or research, Entry 23 of List III relates to employment and unemployment. They, therefore, operate in different fields altogether and there is no repugnancy.

64. In [Deep Chand Vs. The State of Uttar Pradesh and Others](#), the Supreme Court indicated that the repugnancy between two statutes can be ascertained on three principles;

Whether there is direct conflict between the two provisions;

Whether Parliament intended to lay down an exhaustive Code in respect of the subject matter replacing the Act of the State Legislature; and

Whether the law made by Parliament and the law made by the State Legislature occupied the same field.

Only in the above cases, a question of repugnancy or inconsistency would arise.

65. In the instant case, in our opinion, Pharmacy Act, 1948 makes no provision for employment and unemployment of persons working in technical institutions. It is only the State Act which provides for such eventualities. The field is thus not occupied by an Act of Parliament and provisions of Article 254 has no application.

66. In [M. Karunanidhi Vs. Union of India and Another](#), the Supreme Court summarised the tests of repugnancy by formulating the following propositions.

In order to decide the question of repugnancy it must be shown that the two enactments contain inconsistent and irreconcilable provisions so that they cannot stand together or operate in the same field;

There can be no repeal by implication unless the inconsistency appears on the face of the two statutes;

Where the two statutes occupy a particular field, but there is room or possibility of both the statutes operating in the same field without coming into collision with each other, no repugnancy results;

Where there is no inconsistency but a statute occupying the same field seeks to create distinct and separate offences, no question of repugnancy arises and both the statutes continue to operate in the same field."

67. The principles laid down in [Thirumuruga Kirupananda Variarthavathiru Sundara Swamigalme Vs. State of Tamil Nadu and Others](#), [P. Kasilingam and others Vs. P.S.G. College of Technology and others](#), and [State of T.N. and Another Vs. Adhiyaman Educational and Research Institute and Others](#), have no application to

the present case as in those cases, State Legislatures had enacted laws encroaching upon the field occupied by and reserved for Parliament. None of them related to "employment and unemployment" in technical institutions as in the present case.

68. Since there is no repugnancy or inconsistency between the Pharmacy Act, 1948 (Act of Parliament) and the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (Act of State Legislature), the State Act cannot be held void or inoperative.

69. In view of our conclusion that there is no repugnancy between an Act of Parliament and an Act of State Legislature, it is not necessary to deal with the alternative argument of the petitioner that in case of repugnancy, the State Act will operate as it has received the assent of the President.

70. For the foregoing reasons, we hold that the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 apply to employees working in Pharmacy institutions, and School Tribunals constituted under the Act have jurisdiction to entertain, deal with and decide disputes in exercise of the power conferred by the Act. The view taken by this Court in P.D. Prabhudesai and Mohd. Israr Siddiqui is erroneous and is overruled and the decision in Abdulla Jameel Ahmed Ansari is approved.

71. Since the questions referred to us have been answered, the Registry is now directed to place the matters before an appropriate Court for deciding them on merits. Reference is answered accordingly.