IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11317 of 2000

with

SPECIAL CIVIL APPLICATION NOS.12129,12130,11897,11388, 12002, 11196, 11197, 11198, 11477, 11578, 11579,11580, 11165 to 11195, 11245 to 11250, 11494, 11496, 11497, 11242, 11313, 11350, 11373, 12587, 11894, 11825 to 11832, 11256, 11257,11258, 11277 to 11281, 11318, 11319, 11833, 13236, 11236, 11292 and 13451 all of 2000.

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? :

2. To be referred to the Reporter or not? :

3. Whether Their Lordships wish to see the fair copy of the judgement? :

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? :

5. Whether it is to be circulated to the Civil Judge? :

MANAT KHEMRAJ SOMAJI

Versus

DIST PRIMARY EDUCATION OFFICER

Appearance:

MR KB PUJARA, Mr. A.D. Mithani, Mr. J.K. Raval, Mr. N.S. Desai, Mr. D.V.Shah, Mr. Anil Thakore, Mr. M.V. Patel with Mr. J.K. Raval, Mr. Mehul K. Vakharia, Mr. Vanraj D. Pargi, for Petitioners.

MR RA MISHRA with Mr. M.N. Popat for Respondent 1to3.

Ms. Manisha Lavkumar, AGP for respondent Government in SCA No. 11165,11166, 11242, 11292, 11313, 11578,11579, 11580 all of 2000.

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 27/12/2000

CAV JUDGEMENT

There are some basic values which man has cherished throughout the ages. But man looked about him and found the ways of men to be cruel and unjust and so also their laws and customs. He saw men flogged,tortured, mutilated, made slaves, and sentenced to row the galleys or to toil in the darkness of the mines or to fight in an arena with wild and hungry beasts of the jungle or to die in other ways a cruel, horrible and lingering death. He found judges to be venal and servile to those in power and the laws they administered to be capricious, changing with the whims of the ruler to suit his purpose. When, therefore, he found a system of law which did not so change, he praised it. Thus, there was neither hope nor help in man made laws or man established customs for they were one sided and oppressive, intended to benefit armed might and monied power and to subjugate the downtrodden poor and the helpless needy. If there was any help to be found or any hope to be discovered, it was only in a law based on justice or reason which transcend the laws and customs of men, a law made by someone greater and mightier than those men who made these laws and established these customs. Such a person could only be a divine being and such a law could only be 'natural law' or 'the law of nature' meaning thereby 'certain rules of conduct supposed to be so just that they are binding upon all mankind'. It was not 'the law of nature' in the sense of 'the law of the jungle' where the lion devours the lamb and the tiger feeds upon the antelope because the lion is hungry and the tiger famished but a higher law of nature or 'the natural law' where the lion and the lamb lie down together and the tiger frisks with the antelope.

If courts of law are to be replaced by administrative authorities and tribunals, as indeed, in some kinds of cases, with the proliferation of administrative law, they may have to be replaced, it is essential that administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reason in support of the orders made by them. Then alone administrative authorities and tribunals exercising quasi judicial function will be able to justify their existence and

carry credibility with the people by inspiring confidence in the adjudicatory process. The rule requiring reasons to be given in support of an order is, the like principle of audi alteram partem, a basic principle of natural justice which must inform every quasi judicial process and this rule must be observed in its proper spirit and mere presence of compliance with it would not satisfy the requirement of law.

It appears that even the executive authorities when taking administrative action which involves any deprivation of/or restriction on inherent fundamental rights of citizens must take care to see that the justice not only done but manifestly appears to have been done. They have a duty to proceed in a way which is free from even appearance of arbitrariness or unrneasonableness or unfairness. They have to act in a manner which is patently impartial and meets the requirements of natural justice.

In this group of petitions, order of termination dated 12th October, 2000 is under challenge. All the petitioners in this group of petitions were working on the post of primary teacher, duly selected and appointed by the District Primary Education Officer, District Education Committee, Junagadh District Panchayat, Junagadh. Since all these petitions raise common questions of law and facts relating to the impugned order of termination dated 12th October, 2000, all these petitions were heard together and are decided by this common judgment.

Rule in each petitions, service of which is waived by Mr. R.A. Mishra, and Mr. Manoj Popat, learned advocates appearing for the respondents. With the consent of the learned advocates for the parties and in the facts and circumstances of the case, all these petitions are taken up for final hearing today.

The facts which are common to all these petitions are as under:

The petitioners belong to scheduled tribe. The petitioners have passed their SSC Examination with more than 55 per cent of marks. That by circular dated 2nd January, 1990, the State Government in its Education Department, decided to fill up about 4900 back log vacancies of primary teachers of scheduled tribes on expeditious basis and, therefore, the respondent NO.1 herein had issued an advertisement dated 15.2.1990 inviting applications from only scheduled tribe

candidates to appear at the open interview on 21st February, 1990. The required qualification was that of passing of SSC Examination and the requirement of age was between 18 to 33 years. According to the petitioners, neither minimum marks required for selection and appointment nor number of vacancies were notified in the advertisement. Being eligible and qualified, the petitioners had appeared at the open interview with all of original mark sheets and certificates. The petitioners were duly selected by the duly constituted selection committee and their names were placed in the select list. After fully verifying the original mark sheet and certificates of each petitioners and also after being satisfied about the petitioners,therespondentno.1 had issued appointment orders on 28th August,1990. Thereafter, the petitioners immediately joined the duties and discharged the duties honestly and sincerely for more than ten years till the date of their termination. During the said period, the respondent No.1 had sent the petitioners for PTC Training during vacations and the petitioners satisfactorily completed such period of training of PTC and passed the PTC Examination in the year 1994-1995. Since then, the petitioners have been paid the salary as a trained teacher. After the petitioners served for more than five years, the respondent no.1 had issued one show cause notice dated 9th January,1996 alleging that the District Education Committee had passed resolution no. 1/1 dated 1st August, 1990 prescribing minimum requirements of 56.42% of marks in SSC for the appointment and the petitioners were possessing the marks less than that and hence the services of the petitioners were required to be terminated. The petitioners immediately replied the said show cause notice. Thereafter, no further action was taken for further period of five years and then all of a sudden, according to the petitioners, termination order dated 12th October, 2000 has been served upon the petitioners on 30th October, 2000. According to the case of the petitioners, it was never told about the minimum percentage of of marks required for appointment nor any such requirement was prescribed either in the State Government circular dated 2nd January, 1990 nor in the advertisement dated 15.2.1990. The petitioners had produced original mark sheets and certificates and the selection committee duly selected them and the respondent no.1 duly appointed them with open eyes and now, after more than ten years' blotless services, the respondents have no authority in law to terminate their services on the alleged ground of some resolution having been passed on 1st August, 1990 by the District Education Committee ["the Committee" for short].It is also submitted that the

District Education Committee is different from the selection committee and it is for the committee to prepare the select list. The petitioners were placed in the select list and the first respondent had rightly issued the order of appointment to the petitioners.The petitioners had not indulged into any illegality at any stage of selection process. Therefore, the petitioners cannot be visited with the impugned order of termination at this late stage after more than ten years' service. It is contended that no chargesheet was served upon the petitioners, no specific allegation of guilt has been alleged against the petitioners, no departmental inquiry has been held and no reasonable opportunity was given to them before passing the impugned orders of termination against the petitioner. That the petitioners have already completed the age of 33 years and now the petitioners have no chance of getting any alternative employment at this stage and,therefore,the impugned order of termination is contrary to all the canons of equity, law, justice, fair play and natural justice and,therefore,required to be quashed and set aside.

The petitioners have specifically contended that according to the impugned orders of termination, the petitioners had obtained the present appointment by irregularity and,therefore, the impugned orders of termination has been passed by way of punishment. However, before passing such punitive orders, no chargesheet has been issued and it has been passed without specifically alleging the misconduct and initiating departmental inquiry into the charges and,therefore, the impugned orders of termination are violative of the basic principles of natural justice.

The petitioners have produced on record the government resolution dated 2nd January, 1990 and advertisement dated 15th February, 1990, appointment order dated 28th February, 199-, directions of the district primary education officer dated 19.9.1990 to the concerned principals of the schools wherein it is stated that the petitioner has produced all the relevant original certificate before the district primary education officer and it was directed to the principal of the concerned school to allow to resume the duties to the petitioners. The school leaving certificate and mark sheets have been produced on record. The Government circular dated 23.4.1993 has also been produced wherein the list of the primary teacher who has satisfactorily undergone the training has been annexed with the said government resolution. In the said list, name of the petitioners have been recorded. Copy of completion of

the PTC Certificate has also been produced on record. The mark sheet of such PTC training in respect of the petitioners have also been produced; copy of the show cause notice has also been produced on record; reply thereto dated 20.1.1996 has also been produced on record and the termination order dated 12th October, 2000 has also been produced on record.

The respondent has filed reply to the present petition through one Mr. K.L. Dodiya District Primary Education Officer, District Panchayat Junagadh dated 7.11.2000 and the 2nd reply submitted by the same officer dated 19.12.2000. In their reply, the respondents have denied the averments made by the petitioners herein. It is further contended that the contentions raised are already covered by the decision of this court rendered in special civil application no. 3141 of 1993 and other allied matters. According to the respondents, the appointment has been obtained by practising fraud and illegality and that the petitioners have no right to approach this court under Article 226 of the Constitution of India. The respondents have submitted that the petitioners are having alternative remedy and,therefore these petitions are required to be dismissed on that ground. It is also contended that these petitions are required to be dismissed as the petitions are involving disputed questions of fact which cannot be appropriately decided under Article 226 of the Constitution. It is also submitted by the respondents that all these petitions are raising identical contentions about the order of termination and also regarding the procedure to be followed by the authorities and as per the direction of this court, the petitioners have been issued the notice to show cause and, thereafter, hearing was afforded and ultimately, the order of termination has been passed and the petitioners have obtained appointment by fraud and as the order of appointment itself is fraudulent, the entire procedure thereafter has been vitiated as a result of fraud and therefore, order of termination is quite legal, just and proper and has been passed after due compliance of the procedure. It is also submitted by the respondents that as a result of large scale fraud and illegalities and irregularities, order of appointment are obtained by the petitioners and the respondents have further submitted that the circular issued by the Government on 2nd January, 1990 to fill up the back log of the ST Candidates, appointments were required to be made. In December, 1989, such back log was to the tune of 469 posts and accordingly, advertisement was issued for open interview. The interview took place, list of candidate was prepared and

the total number of candidates interviewed were in all 1364 and on the basis of the said list, selection committee prepared the first select list of 1162 candidates and inspite of this fact, the selection committee chairman, secretary and member subsequently included the names of the candidates illegally. The chairman of the selection committee included the names of 170 candidates on 5th March, 1990. The secretary of the committee included the names of 170 candidates. The chairman and secretary of the selection committee also included the names of 18 candidates on 12th March, 1990 whereas in the list of member, nine names were included and on 13.3.1990, 185 names were included in the list of chairman of the selection committee and 254 names were included in the list of secretary of the committee. Similarly, on 14.3.1990, there was not a single name in the list of chairman while in the list of secretary, 76 names were included while 100 names were included in the list of member of the committee. That on 15.3.1990, 67 names were included in the list of the chairman and 306 names were included in the list of secretary and 174 names were included in the list of member. Similarly, in the list of 21.3.1990, four names were included in the list of chairman and no names were included in the list of the secretary and member. The criminal complaint for this large scale irregulrity and fraud has been filed and the entire record is with the police.Thus, according to the respondents, the chairman, secretary and member of the then selection committee illegally included the names of the petitioners in fraudulent manner and also in collusion with the candidates as if they were present at the time of interview. The names of the candidates who have been included in the list mostly belongs to the Panchmahals District. Therefore, these names have been subsequently added and these candidates have not been interviewed by the selection committee. It is also submitted that after the preparation of the first selection list, 346 candidates were given appointment and these appointments were given in the regular manner after following due office procedure noting the appointment orders in the out ward register and sending them by post. Thereafter, large number of candidates have been appointed by the then district primary education officer in illegal and fraudulent manner practising fraud and nepotism without following regular procedure and without noting the orders in the outward register. As the payment to these primary teachers have to be made from the concerned taluka panchayats, these facts did not come to the knowledge of the authorities immediately. There are number of candidates whose names are not figuring in any of the legal or fraudulent registers and yet they

have secured appointment orders. Names of the petitioners also do not figure in the back log registers maintained from the initial list of list of 1364 candidates and the select list of 1162 candidates and, therefore, when the initial entry itself is illegal, void ab initio and it was done by the committee in fraud, nepotism and mal practice, such appointment of the petitioners is contrary to the recruitment rules and the government guidelines. Thereafter, the respondents have submitted that in such mal practice and dishonesty committed by the chairman, secretary and member of the selection committee, the Government by letter dated 5.3.1993 directed to take appropriate action in the matter in accordance with law. Therefore, ultimately, the services of the petitioners were terminated by the respondents. All such teachers had approached this court by filing special civil application no. 3141 of 1993 and other allied matters and this court allowed the said matters by quashing and setting aside the orders of termination and it was directed to the authorities to issue the show cause notice fresh before taking any action. Thereafter, the procedure was followed in respect of such teachers. After following due procedure by issuing show cause notice and subsequently termination orders were passed against such teachers which was challenged by filing special civil application no. 7156 of 1994 and other identical matters.On 27th May, 1994, this court relegated such teachers to the alternative remedy of appeal before the tribunal under section 24 of the Bombay Primary Education Act,1947 and thereafter, the tribunal again terminated the services of 323 teachers by order dated 20.4.1994. Again, such orders were challenged before this court by filing petition being special civil application no. 12311 of 1995 and allied matters. All these petitions were allowed only on the ground that the petitioners were not given reasonable opportunity and that they should be permitted to engage lawyer while representing their case before the tribunal. Thereafter, before the tribunal, opportunity to engage advocate was given and the tribunal allowed all the appeals by order dated 17th October, 1996 and 273 teachers were directed to be reinstated in service within 15 days. Against such decision of the tribunal, the respondents had preferred revision application before the State Government and the said revision application was allowed by order dated 10th June, 1997 and the order of the tribunal dated 17.10.1996 was quashed and set aside. Against that order passed by the Government in revision against the order of the tribunal, such teachers had approached this court and this court by order dated 9.10.1997 passed the order of the State Government in

revision and the education secretary was directed to pass appropriate orders after hearing the advocates for the petitioners in those petitions. Thereafter, the education secretary, after hearing the advocate for such teachers, passed order dated 7th April, 1998 quashing and setting aside the orders passed by the tribunal dated 17.10.1996. Thereafter, such teachers approached the chief minister by way of representation on 17.11.1997 and the said representation has also been rejected by the Hon'ble Chief Minister on 22nd April, 1999. However, this whole history has been given by the respondents in respect of some teachers whose services were earlier terminated by the first respondent and none of the petitioners herein were connected with any of such earlier proceedings. By giving such details, the respondents have pointed out that because of the pendency of the earlier proceedings in respect of some of the teachers, delay has occurred in taking action.

In this group of petitions, on behalf of the petitioners, mainly Mr. Pujara has appeared and has submitted that in view of the government resolution dated 2.1.1990, the respondent had advertised the posts of the primary teachers on 15.2.1990 in respect of ST Candidates alone. It was an open interview and therefore, at the time of oral interview, candidates were required to tender hand written application as per the proforma prescribed alongwith two passport size photographs and original marksheet, certificate with certified copies of mark sheet and certificate and also required to produce certificate from the social welfare officer or the mamlatdar or any other recognised officer for having member of the scheduled tribe. According to Mr. Pujara, there was no such specific selection committee but each candidates were called for open interview just to produce their basic requirement of having educational qualification and to satisfy the age criteria and to satisfy that he candidate belongs to ST Community. This procedure was followed by each petitioner and as per the appointment order issued by the respondents, it is specifically mentioned that as per the personal interview and on the basis of such personal interview, and also on the basis of the result of the educational qualifications, the petitioners were selected and appointed as untrained primary teachers in the scale of Rs.950-1400 and the appointments were given on probation. IN the order of appointment, names of candidates, place of posting, school etc.has been mentioned. It is also mentioned in the appointment order that initially, the candidate will have to report before the committee and to produce original certificate and marksheet etc. and it

is also mentioned in the order of appointment that if the candidate will not report within the period stipulated therein, then,such appointment shall stand cancelled. Such appointment orders were signed by the District Primary Education Officer. Such appointee was required to give bond for serving for five years' period and bond of Rs.10000/-. In view of the appointment orders issued by the respondents, the petitioners have produced all the necessary certificates before the district primary education officer, Junagadh and same has been received and certified by him by letter dated 19th September, 1990 with a direction to the concerned principals of the school to allow the petitioners to report as untrained primary teacher. Learned advocate Mr. Pujara has submitted that almost all the petitioners have completed their training of PTC and have passed the same and necessary certificate and mark sheet to that effect has also been issued by the concerned authority in their favour. Now, he has submitted that after the appointment of the petitioners, more than five years have gone and all of a sudden, on 9.1.1996, the respondent no.1 issued show cause notice to the petitioners wherein two facts were mentioned one of which is the reference made to the orders of this court in special civil application no. 3141 of 1993 and allied matters and it has been alleged against the petitioner that the said appointment has been obtained by adopting illegal means and by committing irregularities and allegation is also made that as per the select list, the petitioners are not possessing requisite qualification and said appointments were obtained by fraud and irregularities and, therefore, explanations were called for from each of the petitioners and the petitioners were directed to submit the same within three weeks and it was accordingly replied by each of the petitioners and in reply, the allegations of fraud and irregularity, nepotism etc. were denied by the petitioners. It is also mentioned by the petitioners that the petitioners were not a party to special civil application no. 3141 of 1993 or any other allied matters and that the original mark sheets, certificates were produced at the relevant point of time during the interview and the same was scrutinised and finalised by the respondents and thereafter the petitioners were selected and appointed to the post of primary teacher and subsequently in result, the petitioners were appointed. It is also submitted that during the total period of five vacation from 1992 to 1994, the petitioners have completed PTC Training and have also cleared PTC Examination and have become trained teacher and are receiving the salary of trained teacher. The petitioners have also asked for personal hearing in the said reply

pointing out that if the authority is not satisfied with the said explanation, they may be given opportunity of personal hearing. Alongwith such reply, the petitioners had annexed copies of appointment order, necessary proof and relevant documents and marksheet of PTC and certificate has also been produced. After submitting the reply on 20.1.1996, without holding any departmental inquiry against the petitioner in respect of serious allegation, the petitioners were called personally by the District Primary Education Officer in the year 1998 and in the personal hearing, which took place in May, 1998, the District Primary Education Officer had come to the conclusion that the appointment has been obtained by the petitioner by adopting fraud and illegality and irregularity and, their names are not included in the select list and they are not possessing the requisite qualifications and their names are not included in the back log priority register and their names were also not included in the staff selection committee and ultimately, on such conclusion while exercising the powers under sec. 24 (1) of the Bombay Primary Education Act, the said officer has issued termination order against each petitioners in this group of petitions.

Learned advocate Mr. Pujara has submitted that the respondents have not followed the procedure prescribed in law while passing the impugned orders of termination. He has further submitted that the impugned orders were passed on the alleged ground of irregularities and illegalities and fraud in obtaining the orders of appointment. However, before passing the orders on such alleged grounds, the respondents have not initiated any detailed regular departmental inquiry though none of the petitioners had admitted the charge levelled against them in the show cause notice and therefore,the impugned orders of termination are illegal, unjust,improper and bad in law and are required to be quashed and set aside. According to him, it was the duty of the respondents to prove the allegations against the petitioners by holding regular departmental inquiry and to give sufficient and reasonable opportunity to defend the charge levelled against them and thereafter the inquiry officer has to give finding whether the charge or the allegation levelled against the petitioners is found to be proved or not and then, explanation is required from the petitioner and thereafter only, final order can be passed by the respondents. However, without resorting to this procedure, the respondents have straight way passed the impugned orders on such alleged grounds by way of punishment and as such, the orders impugned herein are punitive in nature and yet they have been passed without

resorting to such procedure. He has submitted that as regard the allegations of mal practice, fraud or illegality in obtaining the orders of appointment, there is nothing on record to prove the said facts against the petitioners. On the contrary, considering the reply submitted by the respondents against the present petitions, the allegations have been made against the Chairman, Secretary and Member of the then Selection Committee and therefore, no fraud or illegality or irregularity has been established against the petitioner and, therefore, in view of this, the impugned order of termination is required to be quashed. He has relied upon the following decisions :

(1) 1993 (1) GCD 690 (Gujarat) in case of Patel Kantilal Ambalal versus Government of Gujarat.
(2) AIR 1998 SC 101 in case of Vijay Goyal versus Union of India
(3) 1996 Lab IC 588 (SC) in case of Kashinath Nagaya Ibhatte versus State of Maharashtra.
(4) AIR 1991 SC 295 in case of HC Puttaswamy versus Hon'ble CJ Karnataka.
(5) (1991) (2) SCC 599 in case of Ravindra Narayan versus State of Maharashtra.
(6) 1997 (2) GLH 618 in case of BM Shah Education Society versus SHilpa Chauhan
(7) 1986 (2) GLH 753 in case of Anopsinh versus VK Gupta.
(8) 1998(2) CLR 1021 (DB) (Kerala) in case of Pradeepkumar versus Mohanan.
(9) AIR 1999 SC 517 in case of Union of India versus Kishorilal Bablani.
(10) 1999 (3) SCC 60 in case of Dipti Prakash Banerjee versus Satyendra Nath Bose Centre for Basic Science Calcutta.
(11) (JT) 2000(1) SC 540 in case of JM Baxi & Co. Gujarat versus Commissioner of Customs, New Kandla.
(12) 1995 AIR SCW 800 in case of Dr. Balkrishnan Agarwal versus State of UP & Ors.

Learned advocate Mr. Pujara has also placed reliance upon the provisions of the Gujarat Panchayats Service (Discipline and Appeal) Rules, 1964 and has pointed out that the said provisions are applicable to the petitioners and binding to the respondents and in case of disciplinary matters as per sec.7,procoedure for imposing major punishment has been prescribed and as per section 7 subclause (1), no order imposing on a member of the panchayat service any of the penalties specified in

clause (6) to (9) of the rules shall be passed except after a formal inquiry is held as far as maybe, in the manner hereinafter provided. The manner has been provided that the disciplinary authority shall frame definite charge on the basis of the allegation and shall communicate such charges alongwith the statement of allegations to the member of panchayat service and also require him to submit the explanation within such time as may be specified in writing and also to state whether he desires to be heard in person. The person against whom such inquiry has to be held shall for the purpose of preparing defence be permitted to inspect and take extracts from such records as he may specify. On receipt of the written statement of the defence, if any such statement is not received within the time specified, the disciplinary authority may himself inquire into such charges as are not admitted. If the member of the panchayat service desires tobe heard in person, he shall be so heard.If he so desires or if the disciplinary authority so directs an oral enquiry shall be held by the enquiry officer. At such inquiry,evidence shall be heard as to such of the allegations as are not admitted and the person charged shall be entitled to cross examine the witnesses, to give evidence in person and to produce documents if any and to have such witnesses called as he may wish. As per sub clause (9) of clause 7 of the said rules, at the commencement of the inquiry, the inquiry officer shall prepare a report of the inquiry, recording his findings on each of the charges together with reasons therefor.If in the opinion of the enquiry officer, the proceedings of the inquiry establish, charges different from those originally framed, he may record findings on such charges. After receiving the finding report from the inquiry officer, the disciplinary authority shall consider the record of inquiry and will consider the finding on each charge having regard to the findings on the charges and record of proceedings. As per sub clause (13) of clause 7 of the said rules,if the disciplinary authority having regard to the findings is of the opinion that any of the penalties specified in clause (1) to (5) of rule 5 should be imposed, it shall pass appropriate order in the subject to the condition that in every case in which it is necessary to consult the board of selection committee, the record of the inquiry shall be forwarded to the board of selection committee, as the case may be, for its advice and such advice shall be taken into consideration before passing final orders. According to the learned advocate Mr. Pujara, each of the petitioners herein is a member of the panchayat service and hence these rules are applicable to the petitioners and all the petitioners are working for more

than ten years and they are all permanent teachers working with the respondent panchayat and, therefore, the order of termination is bad, illegal and contrary to the principles of natural justice. He has also relied upon the Gujarat Panchayat Service (Recruitment of Primary Teachers) Rules, 1970 and has made reference to the definition of 'administrative officer'. He has relied upon rule 4 of the said rules whereunder qualification has been prescribed. He has also relied upon rule 11,12 and 13 of the said rules. He has submitted that in view of these recruitment rules, the petitioners are qualified candidates appointed after selection and the committee has power to relax the qualification and after preparing the final list of the candidate selected for appointment shall be prepared by the committee and the selected candidates,if required to undergo training in such course as per the government guidelines and execute bond giving undertaking to serve under the panchayat for not less than four years. As per rule 13 of the said rules, the administrative officer shall issue appointment orders of the candidate by the committee strictly according to the ranks given by the committee in the select list. Rule 14 thereof provides that subject to the availability of vacancies candidates from the select list prepared on May shall be appointed before select list is prepared in October next becomes finalised. Mr. Pujara has also relied upon the provisions of the Bombay Primary Education Act,1947. He has submitted that as per section 24(1) of the said Act, the administrative officer shall have power, subject to such general instructions as may be issued from time to time by the director to promote,transfer and take all disciplinary action (including removal or dismissal) against the staff maintained under section 20. He has thereafter relied upon the provisions of section 20. Section 20(1) of the said Act provides that every district school, board with the approval of the Government and every authorised municipality shall maintain an adequate staff of assistant administrative officers, supervisors, attendance officers, supervisors, attendance officers, clerks, primary school teachers and inferior servants and other staff (including engineering staff) as may be in the opinion of the Government be necessary for the administration, management and control of approved schools within its area or for enabling a primary school panchayat constituted under section 36B to discharge its functions under this Act. Section 20(2) of the said Act provides that the staff maintained under sub section(1) shall be the servants of the district school board or of the authorised municipality as the case may be and shall receive their pay, allowances, gratuities and pensions

from the primary education fund. Such staff maintained by a district school board shall receive their provident fund from the fund established under section 46A and the primary school teachers maintained by an authorised municipality shall receive their provident fund from the primary education fund.

Therefore, relying upon the provisions of section 20 of the said Act, learned advocate Mr. Pujara has submitted that the petitioners are the authorised staff maintained by the panchayat. However, before terminating their service, the respondents have not followed the said mandatory rules. According to Mr. Pujara,the petitioners are entitled to protection before terminating their service on the ground of stigma. He has submitted that under sec. 24(2), appeal has been provided against dismissal or termination which is not an effective remedy. He has made reference to the earlier litigations by other teachers as has been referred to by the respondents in their affidavit in reply which as resulted ultimately in said proceedings, none of the teachers has got the result of their legal fight. He has submitted that it is not an efficacious remedy. He has submitted that the detailed procedure of appeal in annexure "C" of the Bombay Primary Education Rules has been provided under rule 71 to 82 but according to him, this detailed procedure itself is not effective and adequate to challenge the termination order by way of appeal when undisputedly the procedure prescribed under the Gujarat Panchayat Service (Discipline and Appeal) Rules 1964 have not been followed and the principles of natural justice have been violated by the respondents and, therefore, in such a situation, this court can entertain the petition and consider the very question while exercising the extra ordinary powers under Article 226 of the Constitution of India.

As against that, learned advocate Mr. Popat appearing with Mr. Mishra has relied upon the following decisions :

(1) 1995(1) GLH 984 in the case of Arvind Dahyabhai Adhyaru versus District Panchayt, Junagadh and another.
(2) 1993 (1) GLR 66 in case of Ms. Hiraben J. CHaudhary versus RC Raval District Primary Education Officer, Mehsana.
(3) 1997 (2) GLH 618 in case of B.M. Shah Education Society versus Ms. SHilpaben B. Chauhan.

Learned advocate Mr. Mishra appearing for the

respondents has submitted that in such cases, detailed inquiry is not necessary because of the fraud committed by the petitioners and since the appointments were secured in collusion with the concerned officers, such procedure is not required to be followed. He has, however, submitted that when this fraud has come to the notice of the respondents, detailed inquiry was initiated and ultimately it was found that these are the appointments which were made by fraud or illegal means and, therefore, show cause notice was issued to each of the petitioners and after reply thereto was received, same was considered and personal hearing was given to each of the petitioners and considering their representation in personal hearing, ultimately impugned orders of termination were passed by the respondent authorities and, therefore, there is no violation of the principles of natural justice as alleged and there is also no denial of any opportunity to the petitioners as alleged. He has read before this court the judgment of this court in special civil application no. 4635 of 1997 dated 9th October, 1997 and common order dated 27th May, 1994 in special civil application no. 7156 to 7158 of 1994 and the orders passed in special civil application no. 12312 of 1994 and allied matters dated 17.1.1996, the order of the Government dated 7th April, 1998 passed by the additional chief secretary and the Government letter dated 22nd April, 1999. In short, it is the submission of Mr.Mishra that in such a situation, the petitioners are not entitled to any further opportunity as alleged and this court should not interfere with the orders impugned herein. He has further submitted that the remedy of appeal as provided under section 24(2) should be considered to be effective and efficacious and this court should not exercise the powers since alternative remedy is available to the petitioners. Therefore, according to Mr.Mishra, all these petitions are required to be dismissed.

Learned advocate Mr. Mishra has relied upon the decision of this Court (Coram : Mr. C.K. Thakkar,J.) rendered in special civil application no. 1415 of 1993 and allied group matters, on 5.4.1993. Mr. Mishra has submitted that the petitioners of the said group of petitions are relating to Sabarkantha District and involving very same question which has been examined by this Court. Relying upon the said decision, Mr. Mishra has submitted that the petitioners cannot claim status in public employment and thepetitioners cannot claim the protection of the provisions of the Gujarat Panchayats Act, 1961 and the Gujarat Panchayat Service (Discipline and Appeal) Rules, 1964 or Article 311 (2) of the

Constitution of India. Mr. Mishra has submitted that the allegations against the petitioners by the respondents are that of fraud, colusion and irregularities committed by the petitioners in obtaining employment with the respondents and, therefore, regular departmental inquiry isnot necessary. Mr. Mishra also relied upon the decision of this COurt (Coram : Mr. C.K.Thakkar,J.) in special civil application No. 3141 of 1993 and other two matters of 1994 dated 22.9.1993 and has submitted that the whole group of petitions was directed against the present respondents namely Junagadh District Panchayat and the District Primary Education Committee, Junagadh. Mr. Mishra has submitted that in this groupof petitions, only show cause notice is directed to issue in respect of the allegations of fraud, irregularities and collusion. Therefore, Mr. Mishra has submitted that the detailed procedure of regular departmental inquiry is not necessary. As against that, learned advocate Mr. Pujara appearing on behalf of the petitioners has relied upon the decision of this court in an identical case being special civil application no. 5389 of 1994 and other group matters decided by this Court (Coram : Mr. S.D.Shah,J.) on 15/21.9.1994. IN the said decision, according to Mr. Pujara, same question has been examined in detail and ultimately in respect of the allegations leveled against the petitioners of the said group about fraud, collusion and irregularities for obtaining appointment as a primary techer, this court has observed that it is very difficult to state that the petitioners therein have obtained initial appointment by committing any fraud or misrepresentation; they are also not guilty of committing any malpractice or misconduct;no specific allegation is made against any of the membersof the selection committee; it is also not stated against any of the petitioner that he was related to any member of the selection committee; in fact,no marks are allotted for performance at the interview as no interview in the strict sense of the term is heldunder the rules and circulars issued; marks are to be allotted on the basis of percentage of marks obtained in the examination; marksheetis to be prepared by the selection committee based on the certificates. In view of such stateof affairs, this court has observed in clear terms that it is very difficult for this court to agree with the respondents that the petitioners were guilty of any irregularity in obtaining employment. The irregularity, if there was any, was attributable to the then District Primary Education Officer and the Members of the subordinate staff. Relying upon the said decision of this court, learned advocate Mr. Pujarahas submitted

that the very same situation is also prevailing in the present case. Mr. Pujara has also submitted the judgment delivered by this Court (Coram : Mr. S.D. Shah,J.) wherein termiationorders were set aside and the petitioners were directed to be reinstated in service with all consequential benefits.

I have considered the submissions made by the learned advocates for the parties. I have also considered the documents brought on record of these petitions. I have also taken into consideration the averments made by the petitioners and the replies submitted by the respondents.The respondents have mainly relied upon the decision of this court in case of Ms. Hiraben J. Chaudhary versus RC Raval reported in 1993 (1) GLR page 66 and it has been submitted that when the service of the teacher has been terminated on the ground of fraud, no inquiry was required to be conducted in fraudulent conduct leading to the appointment beyond issuing show cause notice. This decision has been considered by another decision of this court in case of B.M. Shah Education Society versus Shilpaben B.Chauhan reported in 1997 (2) GLH 618. After considering the earlier decision in case of Hiraben Chaudhary (supra), this court has come to the conclusion that having carefully perused the aforesaid decision, I am unable to find any such particular proposition in that regard. The court, in the first instance, found that the termination of an employee wherein allegation of fraud, misrepresentation or mistakes are stated would amount to visiting employee with evil consequences and permanently stigmatized him without anything rudimentary principles of natural justice. It would not be an order of termination simpliciter but it would be an order of termination based on the allegations of fraud, misrepresentation or mistake which would disentitle an employee from future employee in any public employment. Such an order,therefore, cannot be passed without following rudimentary principles of natural justice namely of informing the party reason for his termination and providing opportunity to tender his explanation with evidence and consideration of such an explanation and evidence by the employee. Aforesaid ratio of the decision rather supports the conclusion of the tribunal that holding of inquiry before termination of service of an incumbent takes place on the ground of fraud, misrepresentation or mistake. Said decision does not lay down the proposition that at no stage the party to contract avoiding contract on the ground of fraud, misrepresentation or mistake is absolved from establishing such fraud or misrepresentation or mistake

if such finding is challenged before the appropriate forum. It is also observed by this court that the observations made in case of Hiraben Chaudhary that the regular departmental inquiry is not necessary nor any oral evidence is required to be adduced or permitted to be adduced does not convey dispensing with the requirement of principles of natural justice.

However, it is necessary to consider the relevant observations made by this court in case of Ms. Hiraben J. Chaudhary versus RC Raval (supra). In para 22A of the said decision, this court has observed as under:

"22A. The findings on first and third propositions would thus, make it clear that the cases like present one should be decided by resorting to second proposition namely of issuing notice to the employee calling upon him to show cause and to tender his explanation for his conduct. The employee should tender his explanation and his documentary evidence. Explanation of the employee alongwith documentary evidence tendered by him should be considered independently and not in biased manner by the employer and after consideration the employer should take a positive decision as to whether it would like to avoid the contract and once such decision is taken, the employer can, by an order, rescind the contract of employment."

In case of Patel Kantilal Ambalal and others versus Government of Gujarat and Others reported in 1993 (1) GCD 690 (Guj), the division bench of this court has held has observed as under in para 6 of the judgment:

"The appointment was made in the year 1981. The so called irregularity was brought to the notice of the Government in 1983 and the inquiry was made and the report of the CID (Crime) was received in the year 1984 and no action thereafter has been taken. According to that report, there was no irregularity in the appointment. If the Government was of the opinion that police opinion was not correct,then, some action was required to be taken at that time.But after another lapse of 7 years, the Government cannot be permitted to take action on the basis of the defect in the appointment in the year 1981. If that appointment was called in question in any court after ten years, no court of law, justice or equity would have granted any

relief of setting aside that appointment and the court would have refused to go into the merits of the case, even if there be a case on merits. Similarly, the government also cannot wake up from the slumber after the period of long years and take action after a decade."

In case of Basudeo Tiwary versus Sido Kanhu University and others reported in 1999 SCC (L & S) 174, it has been observed by the apex court in relevant para 12 of the report as under:

"The said provision provides that an appointment could be terminated at any time without notice if the same had been made contrary to the provisions of the Act, statutes, rules or regulations or in any irregular or unauthorised manner. The condition precedent for exercise of this power is that an appointment had been made contrary to the Act, rules, statutes and regulations or otherwise. In order to arrive at a conclusion that an appointment is contrary to the provisions of the Act, statutes, rules, or regulations etc., a finding has to be recorded and unless such a finding is recorded, the termination cannot be made but to arrive at such a conclusion necessarily an enquiry will have to be made as to whether such appointment was contrary to the provisions of the Act etc. If in a given case such exercise is absent, the condition precedent stands unfulfilled.To arrive at such a finding necessarily enquiry will have to be held and in holding such an enquiry, the person whose appointment is under enquiry will have to be issued a notice. If notice is not given to him, then, it is like playing Hamlet without Prince of Denmark, that is, if the employee concerned whose rights are affected is not given notice of such a proceeding and a conclusion is drawn in his absence, such a conclusion would not be just, fair or reasonable as noticed by this court in DTC Mazdoor Sabha case. In such an event, we have to hold that in the provision, there is an implied requirement of hearing for the purpose of arriving at a conclusion that an appointment had been made contrary to the Act, statute rule or regulation etc. and it is only on such a conclusion being drawn, the services of the person could be terminated without further notice That is how section 35(3) in this case will have to be read."

The right to life includes the right to livelihood. The Sweep of the right of life conferred by Article 21 is wide and far-reaching. It does not mean merely that life cannot be extinguished or taken away as, for example, by imposition and execution of the death sentence, except according to the procedure established by law. That is but one aspect of the right to life. An equally important facet of that right is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. And yet, such deprivation would not have to be in accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right to life. That, which alone makes it possible to live, leave aside what makes life livable, must be deemed to be an integral component of the right to life. Deprive a person of his right to livelihood and you shall have deprived him of his life. The view taken by Apex Court in case of Oga Tellies Vs. Bombay Municipal Corporation reported in A.I.R.1986 180 in respect of the procedure prescribed by law for the deprivation of right conferred by Article 21 must be fair, just and reasonable. The relevant observations made by the Apex Court in para 39, 40 and 41 are as under :-

"It is far too well settled to admit of any argument that the procedure prescribed by law for the deprivation of the right conferred by Art 21 must be fair, just and reasonable. (See E.P. Royanppa Vs State of Tamil Nadu, (1974) 2 SCR 348 : (AIR 1974) 2 SCR 621 : (AIR 1978 SC 597) ; M.H. Hoskot V. State of Maharashtra, (1979) 1 SCR 1 SCR 192 : (AIR 1978 SC 1548); Sunil Batra V. Delhi Administration, (1979) 1 SCR 392 : (AIR 1978 SC 1675); Sita Ram v. State of U.P. (1979) 2 SCR 1085 : (AIR 1979 SC 745); Hussainara Khatoon I. V. Home Secretary, State of Bihar, Patna (1980) 1 SCC 81 : (AIR 1979 SC 1360); Sunil Batra II v. Delhi Adminstration (1980) 2 SCR 557 : (AIR 1980 SC 1579); Jolly George Verghese Vs. Bank of Cochin, (1080) 2 SCR

913, 921-922 : (AIR) 1980 SC 470 at p. 475); Kasturi Lal Lakshmi Raeddy vs. State of Jammu & Kashmir, (1980) 3 SCR 1338, 1356 : (AIR 1980 SC 1992 at p. 2000); and Francis Coiralie Mullin vs. Administrator, UYnion Terrioroty of Delhi(1981), 2 SCR 516, 523-524 : (AiR 1981 SC 746 at p .750)."

40. Just as a mala fide act has no existence in the eye of law, even so, unreasonableness vitiates law an procedure alike. It is therefore essential that the procedure prescribed by law for depriving a person of his fundamental right, in this case the right to life, must conform to the norms of justice and fairplay, Procedure which is unjust or unfair in the circumstances of a case, attracts the vice of unreasonableness, thereby vitiating the law which prescribes that procedure and consequently, the action taken under it. Any action taken by a public authority which is invested with statutory powers has therefore, to be tested by the application of two standards : If any action must be within the scope of authority conferred by law and secondly, it must be reasonable. If any action, within the scope of the authority conferred by law, is found to be unreasonable, it must mean that the procedure established by law under which that action is taken is itself unreasonable. The substance of the law cannot be divorced from the procedure which it prescribes for, how reasonable the law is, depends upon how fair is the procedure prescribed by it. Sir Raymond Evershed says that `The Influence of Remedies on Rights' (Current Legal Problems, 1953, Volume 6), "from the point of view of the ordinary citizen, it the procedure that will most strongly weigh with him. He will tend to form his judgment of the excellence or otherwise of the legal system from his personal knowledge and experience in seeing the legal machine at work". Therefore, "He that takes the procedural sword shall perish with the sword" Per Frankfurter J. in Vitarelli V. Seaton, (1959) 3 Law ED 2nd 102".

41. Justice K.K.Mathew points out in his article on "The Welfare State, Rule of Law and Natural Justice', which is to be found in his book `Democracy, Equality and Freedom'. that there is "substantial agreement in juristic thought that the great purpose of the rule of law

notion is the protection of the individual against arbitrary exercise of power wherever it is found". Adopting that formulation, Bhagwati J. speaking for the Court, observed in Ramana Dayaram Shetty V. International Airport Authority of India, (1979) 3 SCR 1014, 1032 : (AIR 1979 SC 1628 at p.1636), that it is ["unthinkable that in a democracy governed by the rule of law, the executive Government or any of its officers should possess arbitrary power over the interests of the individual. Every action of the executive Government must be informed with reason and should be free from arbitrariness. That is the very essence of the rule of law and its bare minimal requirements."

Similarly, the Apex Court has also considered in case of M/s TRAVNCORE RAYON LTD vs UNION OF INDIA 1971 Supreme Court 862 wherein, it is observed by the Apex Court that judicial power is exercised by the authority normally performing the executive or administrative function, the Apex Court insists upon disclosure of reasons in support of the order on two grounds one that party aggrieved in proceeding before the High Court or Supreme Court has an opportunity to demonstrate that the reasons which pursued the authority to reject his case, were erroneous. The other that the obligation to record reasons operates as deterrent against the possible betrayal action by the executive authority invested with judicial power. The habit of mind an executive officer so formed cannot be expected to change from function to function or from act to act so it is essence that some restrictions shall be imposed on tribunal in a matter of passing orders affecting the rights of the parties.

The inquiry which has been understood by the Apex Court in normal cases which has been observed by the Apex Court in case of MEENGLAS TEA ESTATE VS. THE WORKMEN, AIR 1963 Supreme Court 1719, it has been observed by the Apex Court that it is an elementary principle that a person who is required to answer a charge must know not only the accusation but also the testimony by which the accusation is supported. He must be given a fair chance to hear the evidence in support of the charge and to put such relevant question by way of cross examination as he desires. Then he must be given a chance to rebut the evidence led against him. This is the barest requirement of an enquiry of this character and this requirement must be substantially fulfilled before the result of the

enquiry can be accepted. A departure from this requirement in effect throws the burden upon the person charged to repeal the charge without first making it out against him. The inquiry must be vitiated because it was not held in accordance with principles of natural justice. Similarly a view taken by the Apex Court in case of SUR ENAMEL AND STAMPING WORKS LTD VS. THE WORKMEN reported in 1963 Supreme Court page 1914. The relevant observations in Para-4 are as under :-

"In support of the appeal against this order Mr.Sen Gupta has urged that it was not open to the Industrial Tribunal to go behind the finding arrived at by the domestic tribunal. He contended that the Tribunal was wrong in thinking that the rules of natural justice were not followed. It appears that a joint enquiry was held against Manik and one Birinchi. Nobody was examined at this enquiry to prove the charges. Only Manik and Birinchi were examined. They were confronted with the reports of the supervisors and other persons made behind their backs and were simply asked why these persons would be making the reports against them falsely. It is not clear whether what they said was recorded. According to the enquiring authority they were "unable to explain as to why these persons would be making the reports against them falsely." In our opinion, it would be a misuse of the words to say that this amounted to holding of proper inquiry. It has been laid down by this Court in a series of decisions that if an industrial employee's services are terminated after a proper domestic enquiry held in accordance with the rules of natural justice and the conclusions reached at the enquiry are not perverse the industrial tribunal is not entitled to consider the propriety or the correctness of the said conclusions. In a number of cases which have come to this Court in recent months, we find that some employers have misunderstood the decisions of this Court to mean that the mere form of an enquiry would satisfy the requirements of industrial law and would protect the disciplinary action taken by them from challenge. This attitude is wholly misconceived. An enquiry cannot be said to have been properly held unless (i) the employee proceeded against has been informed clearly of the charges levelled against him, (ii) the witnesses are examined - ordinarily in the presence of the employee - in respect of

the charges, (iii) the employee is given a fair opportunity to cross examine witnesses, (iv) he is given a fair opportunity to examine witnesses including himself in his defence if he so wishes on any relevant matter, and (v) the enquiry officer record his findings with reasons for the same in his report. In the present case the persons whose statements made behind the backs of the employees were used by the enquiring authority were not made available for cross examination but it would appear that they were not even present at the enquiry. It does not even appear that these reports were made available to the employee at any time before the enquiry was held. Even if the persons who made the reports had been present and the employee given an opportunity to cross examine them, it would have been difficult to say in these circumstances that was a fair and sufficient opportunity. But in this case it appears that the persons who made the reports did not attend the enquiry at all. From whatever aspect the matter is examined it is clear that there was no enquiry worth the name and the Tribunal was justified in entirely ignoring the conclusion reached by the domestic Tribunal."

The question of principles of natural justice is required to be followed by the executive or administrative authority at the time of taking decision or determination any issue which may adversely affect the right of persons or it may have adversely civil consequences even in such circumstances, the principles of natural justice of giving reasonable effective opportunity to the persons has been considered by the Apex Court in case of SRIMATI MENKA GANDHI VS. UNION OF INDIA reported in AIR 1978 Supreme Court 597. The Apex Court has also considered in the said decision that if suppose rule or Section is silent about principles of natural justice even though, justice of common law will supply the omission of legislature. The following observations of the Apex Court are quoted as under :-

"32. It is well established that even where there is no specific provision in a statue or rules made there under for showing cause against action proposed to be taken against an individual, which affects the rights of that individual, the duty to give reasonable

opportunity to be heard will be implied from the nature of the function to be performed by the authority which has the power to take punitive or damaging action. This principle was laid down by this Court in the State of Orissa Vs. Dr.(Miss) Binapani Dei (AIR 1967 SC 1269 at p. 1271) in the following words :

"The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. it is one of the fundamental rules of our constitutional set up that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would,therefore, arise from the very nature of the function intended to be performed; it need not be shown to be super-added. If there is power to decide and determine to the prejudice of a person,duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case."

33. In England, the rule was thus expressed by Byles J. in Cooper V. Wandsworth Board of Works : (1863) 14 CB (NS) 180 :

"The laws of God and man both give the party an opportunity to make his defence, if he has any. I remember to have heard it observed by a very learned man, upon such an occasion, that even God himself did not pass sentence upon Adam before he was called upon to make his defence. "Adam (says God), "where art thou ? Has thou not eaten of the tree whereof I commanded the that thou shouldest not eat." And the same question was put to Eve also."

37. It appears to me that even executive authorities when taking administrative action which involves any deprivations of or restrictions on inherent fundamental rights of citizens must take care to see that justice is not only done but manifestly appears to be done.

> They have a duty to proceed in a way which is free from even the appearance of arbitrariness or unreasonableness or unfairness. They have to act in a manner which is patently impartial and meets the requirements of natural justice."

After considering the decisions of the apex court as well as of this court, there are few other decisions also on the same point in case of Chandreshwar N. Dubey and others versus Union of India reported in AIR 1998 SC 2671 wherein the apex court has observed that even in case of temporary employees, termination of service on the ground of disciplinary action without any inquiry is liable to be set aside.

In case of State of UP Versus Shatrudhanlal, reported in 1998 (80) FLR 389, the apex court has observed that one of the principles is that a person against whom an action is proposed to be taken has to be given an opportunity of hearing. That also includes effective opportunity. Preliminary inquiry which is conducted on the back of the delinquent employee may often constitute whole basis of the chargesheet. Therefore, an employee is required tobe called upon to submit his reply to the chargesheet. It has been observed that the opportunity to the employee has to be effective and not mere pretence in departmental proceedings where the chargesheet is issued and the documents which are proposed to be utilized against that person are connected in chargesheet, copies thereof are not supplied to him, it cannot be said that effective opportunity to defend was provided to the delinquent employee.

In case of Dipti Prakash Banerjee versus Satyendra Nath Bose National Centre for Basic Sciences Calcutta and others reported in (1999) 3 SCC 60, it has been observed by the apex court that the termination order is bad if it contains stigma but no regular inquiry has been conducted.

Then, in case of UP Ahuja versus State of Punjab and others reported in 2000 AIR SCW 792, it has been observed by the apex court that the termination order having been passed on the ground that the probationer had failed in the performance of his duties administratively and technically is ex facie stigmatic, such an order, on the face of it, is stigmatic and could not have been passed without holding a regular departmental inquiry and giving opportunity of hearing to the probationer. Plea

that the probationer cannot claim any right on the post as his service could be terminated at any time during the period of probation without any notice as set out in letter of appointment cannot be countenanced.

Thereafter, in case of Narsingh Pah versus Union of India and others reported in AIR 2000 SC 1401, it has been observed by the apex court in respect of termination of service of casual labour in a government department, that order having passed on the basis of preliminary inquiry and not on the basis of regular inquiry without issuing chargesheet or giving opportunity of hearing to the appellant cannot be sustained.

Recently, in case of Hardwarilal versus State of UP and Others reported in 2000 SCC (L & S) 85, wherein the appellant, a police constable was charged ofhaving his colleague while he was under the influence of liquor, the apex court has observed that neither the complainant nor the other employee who accompanied the appellant therein to hospital formedical examination was examined as a witness. In the said decision, the inquiry was held vitiated being in violationofnatural justice. Plea rejected that there was other material sufficient to come to conclusionone way or the other, having that impactof complainant's testimony couldnot be visualised and also evidence of the employee who accompanied the appellant to hospital would also bear upon the appellant's stateof inebriation, if any.

In case of State of Andhra Pradesh versus N. Radhakishan reported in 1998 AIR SCW 1629, the apex court has observed that the disciplinary proceedings has been taken after the period of ten years which are relating to the incident for over 10 years and non explanation by the authority. Such chargesheet memo is required to be set aside. Considering the said decision, the petitioners in this case were appointed on 28th August, 1990 and the show cause notice was issued for the first time after the period of about five years on 9.1.1996 and immediately reply to the said show cause notice was submitted on 20.1.1996 and thereafter, the impugned order of termination has been passed after about period of four years on 12th October, 2000 and this itself is fatal on the ground that the show cause notice dated 9th January, 1996 relate to the incidents of 1990 in respect of fraud and irregularities committed in the year 1990 and,therefore, as per my view, delay in issuing show cause notice after about five years and then delay in passing impugned order has vitiated the impugned order of termination.

As regards the contention of Mr. Mishra and Mr. Popat appearing for the respondents that the petitioners are having alternative remedy of appeal under section 24(2) of the Bombay Primary Education Act,1947, learned advocate Mr. Pujara has relied upon the decision of the apex court in case of Dr.Balkrishnan Agarwal versus State of Utter Pradesh reported in 1995 AIR SCW page 800. In the said decision,the apex court has observed that the petition was pending in the high court for five years and the question raised was involving pure question of law, even if the alternative remedy of reference to the chancellor was invoked, the person aggrieved by the order of the chancellor was bound to agitate the question in the Court. In such circumstances, the petitioner should not have been non suited on the ground of availability of an alternative remedy. Mr. Pujara has also relied upon the decision of the apex court in case of JM Baxi and Company Gujarat versus Commissioner of Customs Kandla reported in (JT) 2000 (1) SC page 540. As per the facts of the said decision, excise duty was demanded from the importer after the lapse of sixteen years and the writ against the said demand was dismissed on the ground of existence of an alternative remedy. IN the said decision, it was held by the apex court that in such circumstances, the high court ought to have exercised its jurisdiction on merits and the order of the High court was set aside by the apex court in the said decision while remanding the matter for disposal in accordance with law.

Therefore, considering the above decisions of the apex court and the observations made therein, when the principles of natural justice have been violated and the order of termination has been challenged on the ground that no regular departmental inquiry has been held against the petitioner before terminating their services, when the services of the petitioner has been terminated on the charge of the appointment having been obtained by practising fraud and irregularity and illegality, the respondents ought to have initiated regular departmental inquiry into such charges and in such circumstances, as per my view, it is not necessary to relegate the petitioners to the alternative remedy of appeal as provided under section 24(2) of the Bombay Primary Education Act,1947 because it is a pure question of law which can be decided by this court in a petition under Article 226 of the COnstitution of India.

In case of K.S. Joy v. Indian Institute of Management and others reported in 1994 (1) GLR 57, the

division bench of this court has observed as under in para 8 of the report:

"Even if it is assumed that the provisions of section 52A of the G.U. Act are attracted, and the dispute could be referred to a tribunal of arbitration as provided therein, then also,once the petition is entertained by the High Court and is heard on merits, it would not be proper for the High Court to relegate the party to an alternative remedy. This is the view taken by the Supreme Court in the case of Hriday Narain v. I.T. Officer, Bombay, reported in AIR 1971 SC 33."

In para 8A of the said report, it has been further observed as under:

"8A. Moreover, it may be noted that the availability of an alternative adequate remedy and exhausting of the same before resorting to a petition under Article 226 of the Constitution of India does not oust the jurisdiction of the Court. In the case of Ram and Shyam Company v. State of Haryana and others AIR 1985 SC 1147, the supreme court,has, inter alia, observed that the courts have imposed a restraint on its own wisdom on exercise of jurisdiction under Article 226 where the party invoking the jurisdiction has an effective, adequate alternative remedy:

' xxx Where the order complained against is alleged to be illegal or invalid as being contrary to law, a petition at the instance of person adversely affected by it would lie to the High court under Art.226 and such a petition cannot be rejected on the ground that an appeal lies to the higher officer or the State Government. An appeal in all cases cannot be said to provide in all situations an alternative effective remedy keeping aside the nice distinction between the jurisdiction and merits.'"

In view of the above decisions of the apex court and of this court, as per my view, availability of the alternative remedy would not oust the jurisdiction of this court.

In light of the submissions of both the learned advocates, considering the facts of the present case and also considering the Government Resolution dated 2.1.1990, the selection of each petitioner based on percentage received in SSC Examination. Therefore, there was no oral interview in a strict sense taken by the committee. It was an open interview just to verify the marksheet, certificate and percentage and caste certificate produced by each candidate. This fact has been mentioned in the advertisement. In appointment order dated 28.8.1990, at the time of oral interview, selectlist was prepared only on the basis of the percentage received in the SSC Examination. Therefore, in oral interview, except to verify the original marksheet, certificate, school leaving certificate and to consider the merits of having percentage in the SSC Examination. As per termination order, each petitioner had appeared in the oral interview. Therefore, considering very same situation in the present case which occured in the case of decision rendered by this Court (Coram : Mr. S.D. Shah,J.), in the present case, in the show cuse notice dated 9.1.1996, no details are given about fraud, or misrepresentation or irregularities committed by the petitioners. Only vague allegations of fraud and irregularities have beenmade against the petitioners. In reply to the said show cause notice, each petitioner has denied the charge and asked for reasonable opportunity. In termination orders of each petitioner, no specific finding has been arrived at by the competent authority that on what basis and on what legal evidence,the allegation of fraud, irregularities were committed by the petitioners. That no reasons are given that how the said allegations are proved against the petitioners. In termination order, in all, five irregularities are mentioned by the competent authority but in respect to each petitioner, which irregularity found to be proved and on what evidence it has been found to be proved has not been disclosed by the competent authority. In fact,it is very difficult to state that these petitioners have obtained initial appointment by committing any fraud or misrepresentation. They are alsonot guilty of commiting any malpractice or misconduct. No specific allegation is made against any petitioner that he is guilty of influencing any of the member of the selection committee. It is also not stated against any of the petitioners that he was related to any member of the selection committee. In fact, no marks are alloted for performance at interview in the strict sense of the term is held.Under the rules and circulars issued, marks are to be allotedon the basis of the percentage of

marks obtained in the examination. The marksheet is to be prepared by the selection committee basedon the certificate. Therefore, it is very difficult for this court to agree with the submission of the respondent that the petitioners were guilty of any fraud, irregularity and collusion as alleged. That irregulrity, if there was any, was attributable to the District Primary Education Officer, Chairmanand Member of the then Selection Committee.

It is also necessary to consider one more aspect of the matter that any allegation against the petitioners about fraud, irregularities, misrepresentation and collusion for obtaining appointment as per service rules, it is a misconduct alleged to have been committed by the petitioner. The District Primary Education Officer of the District Education Committee, Junagadh has exercised the powers under section 24 (1) of the Bombay Primary Education Act,1947. The District Primary Education Officer has power to take all disciplinary action including removal or dismissal against the staff maintained under section 20(1). The primary school teachers are covered as a stff maintained under section 20 of the Act and, therefore, the Gujarat Panchayat Service (Discipline and Appeal) Rules,1964 are applicable to the petitioners. The petitioners are the members of the panchayat service and are a panchayat servants. Therefore, before passing any punishment order against the petitioners in respect of any major penalty, then a procedure prescribed under rule 7 of the Rules, 1964 is required to be followed. Undisputedly, rule 7 of the 1964, Rules has not been followed by the repondents. The petitioners who were in service since more than ten years have been removed and their services have been terminated onthe basis of the alleged serious misconduct against them and order of punishment has been passed by way of disciplinary action under section 24(1) of the Bombay Primary Education Act, 1947. Therefore also, regular deparptmental inquiry which has not been held before passing termination order amounts to denial of effective reasonable opportunity to the petitioners which has violated the basic principles of natural justice.

Considering all the above referred decisions and the submissions made by both the learned advocates and also considering the facts which are on record, the termination of each of the petitioners herein on the ground that they have secured the appointment by committing fraud and mal practices nepotism and irregularity without holding regular inquiry as provided under the Gujarat Panchayats (Discipline and Appeal)

Rules,1964 are required to be quashed and set aside. On such alleged misconduct, the services of the petitioners herein have been terminated and, therefore, regular departmental inquiry ought to have been initiated before terminating their services. The respondents were aware about the said fraud and mal practice committed by the petitioners and their own officers as per their reply but at that point of time, no prompt action has been taken against the petitioners immediately and the respondents waited for a pretty long time and more than five years had gone and thereafter only, notice was issued by the respondents to the petitioners on 9th January, 1996 and thereafter,for a further period of four years, no action was taken and they remained silent and inactive and ultimately on 12th October, 2000, impugned order of termination has been passed. As per my view, during such a long period, they ought to have followed the procedure and ought to have initiated regular departmental inquiry into the charges levelled against the petitioners and thereafter, could have passed appropriate orders but they have not resorted to such procedure and have straightway passed the impugned orders of termination under section 24(1) of the Bombay Primary Education Act,1947 and,therefore, the impugned orders of termination are not tenable. Meaning thereby, these powers has been exercised by the authorities considering the petitioners as staff maintained under section 20 of the said Act of 1947. Thus, the petitioners have been considered as a staff maintained under section 20 of the Act and, therefore, powers under section 24(1) has been exercised for terminating their services and, therefore, as per my view, said termination is not termination simpliciter but it is by way of taking disciplinary action against the staff maintained under sec.20 of the said Act. If this aspect is considered that the petitioners is the staff maintained under sec. 20, then, the second logical conclusion would be that in such situation, the staff maintained under sec. 20 of the Act has to be given the protection of the Gujarat Panchayat Services (Discipline and Apeal) Rules, 1964. However,such protection has not been given to the petitioner and the procedure as provided under the said rules of 1964 has not been followed by the respondents before terminating their services on such alleged misconduct. Therefore, detailed procedure which has been prescribed under the said rules of 1964 under rule 7 sub rule (1) to (14) is required to be followed which has not been done in the case before hand. As per my view, these are the mandatory requirements which have not been followed by the respondents before passing the impugned orders of termination against the petitioners by way of punishment

and, therefore, the orders of termination passed against the petitioners herein are against the provisions of the Gujart Panchayat Service (Discipline and Appeal) Rules, 1964 and are also against the principles of natural justice and therefore, they are required to be quashed and set aside as the same have been passed without holding regular proper inquiry against the petitioners and have been passed without affording proper opportunity of hearing to the petitioners.

In view of the above, as per my view, the order of termination dated 12th October, 2000 passed against the petitioners herein is contrary to the basic principles of natural justice and is also contrary to the relevant provisions of 1964 Rules and, therefore, the order of termination are illegal, contrary to the principles of natural justice and are, therefore, required to be quashed and set aside.

For the aforesaid reasons, in the result, all these petitions are allowed. Impugned order of termination in each petition dated 12th October, 2000 passed against the petitioners is hereby quashed and set aside. The respondents are hereby directed to reinstate each petitioner in service within six weeks from the date of receipt of writ of this order and to pay the back wages to each petitioners within eight weeks from the date of receipt of writ of this order for the intervening period as if the services of the petitioners herein were not terminated and they had continued in service. Rule is made absolute in terms indicated hereinabove with no order as to cost. Direct Service is Permitted.

27.12.2000 (H.K. Rathod,J.)

Vyas