IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE
&
THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 18TH DAY OF DECEMBER 2014/27TH AGRAHAYANA, 1936

WP(C).No. 36422 of 2004 (J)

PETITIONER(S):

DR.JOHN KURIAKOSE,
KOCHUPURAKKAL HOUSE, CHERUKUNNAM,
ASAMANNOOR P.O., PIN-683 549, (PRINCIPAL,
ST.MARY'S COLLEGE, MANARCAUD).

BY DR.JOHN KURIAKOSE (PARTY IN PERSON).

RESPONDENT(S):
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1. **STATE OF KERALA,**
   REPRESENTED BY THE PRINCIPAL SECRETARY,
   HIGHER EDUCATION DEPARTMENT, SECRETARIAT,
   THIRUVANANTHAPURAM-695 001.

2. **DIRECTOR OF COLLEGIATE EDUCATION,**
   VIKAS BHAVAN, THIRUVANANTHAPURAM-695 001.

3. **MAHATMA GANDHI UNIVERSITY,**
   REPRESENTED BY ITS REGISTRAR,
   P.D. HILLS P.O., KOTTAYAM-686 001.

4. **ST.MARY'S COLLEGE,**
   MANARCAUD, MALAM P.O., PIN-686 031,
   REPRESENTED BY ITS MANAGER.

5. **MAR ATHANASIUS COLLEGE,**
   KOTHAMANGALAM- 686 666,
   REPRESENTED BY ITS MANAGER.

R1 & R2 BY GOVT. PLEADER SMT.GIRIJA GOPAL.
R3 BY SRI.P.JACOB VARGHESE, SENIOR SC,
ADVS. SRI.VARUGHESE M.EASO, SC,
SRI.VIVEK VARGHESE P.J., SC.
R4 BY SRI.K.GOPALAKRISHNA KURUP, SENIOR ADVOCATE.
ADV. SRI.S.MANU
R5 BY ADVS. SRI.GEORGE JACOB (JOSE),
SRI.REENA ABRAHAM.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19-11-2014, THE COURT ON 18-12-2014 DELIVERED THE FOLLOWING:

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

EXT.P1	COPY OF THE ADVERTISEMENT APPEARED IN THE UNIVERSITY NEWS DATED 08/05/2000.
EXT.P2	COPY OF THE REPORT OF STAFF SELECTION COMMITTEE DATED 01/07/2000.
EXT.P3	COPY OF THE APPOINTMENT ORDER DATED 03/07/2000.
EXT.P4	COPY OF THE PROCEEDINGS OF THE 4TH RESPONDENT DATED 03/07/2000.
EXT.P5	COPY OF THE APPLICATION DATED 01/07/2000 SUBMITTED BY THE PETITIONER BEFORE THE 5TH RESPONDENT.
EXT.P6	COPY OF THE RELIEVING ORDER ISSUED BY THE 5TH RESPONDENT DATED 03/07/2000.
EXT.P7	COPY OF THE APPLICATION DATED 16/12/2000 SUBMITTED BY THE 4TH RESPONDENT BEFORE THE 3RD RESPONDENT.
EXT.P8	COPY OF THE ORDER DATED 31/03/2001 OF THE 3RD RESPONDENT.
EXT.P9	COPY OF THE JUDGMENT DATED 27/07/2004 IN WP(C).NO. 29801/2003 OF THIS HONOURABLE COURT.
EXT.P10	COPY OF THE SHOW CAUSE NOTICE DATED 17/08/2004 ISSUED BY THE 4TH RESPONDENT TO THE PETITIONER.
EXT.P11	COPY OF THE LETTER DATED 01/09/2004 FROM THE PETITIONER TO THE 4TH RESPONDENT.
EXT.P12	COPY OF THE REPLY DATED 03/09/2004 FROM THE 4TH RESPONDENT TO THE PETITIONER.
EXT.P13	COPY OF THE EXPLANATION DATED 22/09/2004 SUBMITTED BY THE PETITIONER BEFORE THE 4TH RESPONDENT.
EXT.P14	COPY OF THE ORDER DATED 12/10/2004 ISSUED BY THE 4TH RESPONDENT.
EXT.P15	COPY OF THE ORDER DATED 15/10/2004 ISSUED BY THE 4TH RESPONDENT.
EXT.P16	COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE 4TH RESPONDENT DATED 03/11/2004.
EXT.P17	COPY OF THE REPLY DATED 15/11/2004 FROM THE 4TH RESPONDENT TO THE PETITIONER.

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EXT.P18 COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 03/11/2004.

EXT.P19 COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT DATED 03/11/2004.

EXT.P20 COPY OF THE ORDER DATED 03/09/2003 SUSPENDING THE PETITIONER ISSUED BY THE MANAGER, ST. MARY'S COLLEGE, MANARCAUD.

EXT.P21 COPY OF THE STATEMENT OF FACTS DATED 12/11/2003 ISSUED TO THE PETITIONER BY THE MANAGER, ST. MARY'S COLLEGE, MANARCAUD.

EXT.P22 COPY OF THE ORDER DATED 13/09/2003 ISSUED BY THE MANAGER, ST. MARY'S COLLEGE, MANARCAUD.

RESPONDENT'S EXHIBITS:-

EXT.R3A COPY OF THE PROCEEDINGS DATED 03/07/2000 OF THE MANAGER.

EXT.R3B COPY OF THE ORDER OF APPOINTMENT DATED 03/07/2000.

EXT.R3C COPY OF THE ORDER DATED 31/03/2001 OF THE UNIVERSITY APPROVING THE APPOINTMENT OF PRINCIPAL, ST. MARY'S COLLEGE, MANARCAUD.

EXT.R4A COPY OF THE MINUTES OF THE MEETING OF THE GENERAL BODY (EDAVAKA POTHUYOGAM) OF ST. MARY'S JACOBITE SYRIAN CHURCH, MANARCAUD HELD ON 12/03/2000.

EXT.R4B COPY OF THE MINUTES OF THE MEETING OF THE GOVERNING BOARD OF THE COLLEGE HELD ON 24/04/2000.

EXT.R4C COPY OF THE MINUTES OF THE MEETING OF THE GOVERNING BOARD OF THE COLLEGE HELD ON 01/07/2000 AND 10/07/2000.

EXT.R4D COPY OF THE APPOINTMENT ORDER DATED 03/07/2000 SERVED ON THE PETITIONER.

EXT.R4E COPY OF THE ORDER DATED 22/04/2002 ISSUED BY THE SECRETARY OF THE 5TH RESPONDENT COLLEGE.

//TRUE COPY//

rs. P.S. TO JUDGE

'C.R'

ASHOK BHUSHAN, Ag.CJ,
A.M.SHAFFIQUE, J
&
A.K.JAYASANKARAN NAMBIAR, J

W.P(C).No. 36422 of 2004

Dated this the 18th December, 2014

JUDGMENT

Ashok Bhushan, Ag.CJ.

The learned Single Judge, while hearing the Writ Petition, by reference order dated 18.4.2012, directed the matter to be placed before the Acting Chief Justice for consideration by a Larger Bench. Thereafter the Writ Petition was placed before a Division Bench. The Division Bench vide its order dated 12.5.2013 directed the Writ Petition to be placed before the Full Bench. Consequently, the Writ Petition has been placed for consideration before this Bench.

2. This is a second round of litigation initiated by the petitioner by means of the Writ Petition in this Court. The

earlier Writ Petition, W.P(C).No.29801 of 2003 was placed before the Full Bench, which disposed of the matter by its judgment dated 27.7.2004 leaving the question to be decided in appropriate proceedings; The brief facts giving rise to this Writ Petition now need to be noted.

3. The petitioner joined the service of the fifth respondent as Lecturer in English. The fourth respondent College issued an advertisement in the University News dated 8.5.2000 inviting applications for appointment to the post of Principal of the College. The post of Principal in the fourth respondent College fell vacant on 31.3.2000 due to the retirement of the earlier incumbent. The petitioner submitted an application for the said post. A Selection Committee was constituted in accordance with Section 59 of the Mahatma Gandhi University Act, 1985 (hereinafter referred to as 'the Act, 1985'). Selection was conducted in accordance with the provisions of Section 59 of the Act, 1985 by duly constituted Selection Committee. The petitioner was recommended to be appointed as the

Principal. The recommendation of the Selection Committee was forwarded to the University for approval as required by Section 59(8) of the Act, 1985. The University approved the appointment, which was communicated to the College by letter dated 31.3.2001. The College issued an appointment order to the petitioner appointing him as Principal with effect from 3.7.2000. The petitioner referred an application to his earlier institution, i.e., 5th respondent for being relieved. In the letter the petitioner requested the 5th respondent to relieve him with lien of five years. The 5th respondent College issued relieving order dated 3.7.2000 mentioning that the petitioner's lien is retained in the post of Lecturer (Selection Grade) in English for a period of five years.

4. The petitioner was placed under suspension by order dated 3.9.2003 of the 4th respondent College pending disciplinary proceedings. Challenging the order dated 3.9.2003, the petitioner filed W.P(C).No.29801 of 2003. In the Writ Petition a preliminary objection was

raised by learned counsel for the management that the Writ Petition having been filed against a private body was not maintainable. Learned counsel for the management placed reliance on a Full Bench judgment of this Court in ***Madhavan Pillai v. Balan and others*** (1979 KLT 220). It was contended on behalf of the petitioner that the writ Petition was maintainable in view of the various judgments of the Apex Court. The matter was placed before the Division Bench and the Division Bench by order dated 14.11.2003 directed the matter to be placed before the Full Bench. The Writ Petition came up for hearing before the Full Bench. Before the Full Bench learned counsel for the management submitted that the enquiry ordered against the petitioner has reached final stage and the enquiry report has already been served on the petitioner. It was contended by the management that in case the management imposes any punishment, the petitioner has got an effective alternative remedy by way of appeal before the University Appellate Tribunal under

Section 63(6) of the Act, 1985. The Full Bench left the question regarding maintainability of the Writ Petition open, but disposed of the Writ Petition directing the Management to pass appropriate orders with liberty to the petitioner to take recourse of the alternative remedy. After the above said judgment, the management had proceeded against the petitioner.

5. The suspension order dated 3.9.2003 mentioned four allegations against the petitioner on which disciplinary enquiry was to be conducted. The Manager issued letter dated 12.11.2003 containing statement of facts and charges. The letter dated 12.11.2003 referred to certain documents, which were to be relied on in respect of each charge, as well as the witnesses to be examined. The petitioner was earlier informed on 13.9.2003 about the appointment of the inquiry officer to conduct the disciplinary enquiry. The letter dated 13.9.2003 was referred to as charge sheet. The petitioner filed his statement of defence on 21.11.2003 as also additional

statement of defence on 7.1.2004. After enquiry, a report dated 30.1.2004 was submitted holding certain charges to be proved. Show cause notice dated 17.8.2004 was issued to the petitioner by the Manager directing the petitioner to show cause why punishment of removal from service or punishment of reduction to the lower post of Selection Grade Lecturer in English in the Department of English in St.Mary's College, Manarcaud should not be imposed. The petitioner, after receipt of the notice, prayed for a clarification vide his letter dated 1.9.2004. The petitioner stated that three punishments have been proposed, i.e., removal from service, reduction to the post of Selection Grade Lecturer and sending back to M.A.College, Kothamangalam. The petitioner enquired as to what exactly the punishment proposed was. The management replied vide letter dated 3.9.2004 clarifying that the punishment proposed is only the punishment of removal from service or reduction to the lower post of Selection Grade Lecturer in English in 4th respondent College. The

petitioner submitted his explanation to the show cause notice vide his letter dated 22.9.2004. The Manager, as the disciplinary authority, issued order dated 12.10.2004 informing the petitioner that the petitioner's appointment on deputation as Principal of St.Mary's College stands terminated with effect from 12.10.2004 and he stands reverted to the post of Selection Grade Lecturer in English in Mar Athanasius College, Kothamangalam. The petitioner, after receipt of order dated 12.10.2004 and relieving order dated 15.10.2004, submitted a representation to the Manager requesting to withdraw orders dated 12.10.2004 and 15.10.2004. The petitioner stated in the representation that he was never on deputation, he was directly appointed and that he has lien in the post of Principal of St.Mary's College and his previous lien has come to an end under Rule 16 of the Kerala Service Rules. The petitioner gave further representation and thereafter filed the present Writ Petition praying for the following reliefs:

"i. Quash Exhibit P14 declaring that the 4th respondent is not competent to revert the petitioner to the 5th respondent College by terminating his appointment.

ii. Direct the 4th respondent to reinstate the petitioner as Principal with back wages, continuity of service and all consequential benefits.

iii. In the alternative, issue a writ of mandamus to the 2nd and 3rd respondents to consider and pass orders on Exhibits P18 and P19 respectively.

iii(a). issue a writ of certiorari or any other appropriate writ, direction or order calling for the records leading to Exhibit P20 and quashing the same.

iii(b). declare that Exhibit P14 is one issued without any authority of law and is therefore void and nonest.

iii(c) declare that no disciplinary proceedings have been legally initiated against the petitioner and hence the action of the 4th respondent in keeping the petitioner away from service is unautohrized, illegal and

violative of Article 14 of the Constitution of India."

6. Before we analyse the submissions of learned counsel for the parties, it is necessary to refer to the earlier Full Bench judgment of this Court in W.P(C). No.29801 of 2003. Although the issue of maintainability of the Writ Petition against a private body was referred to, the Full Bench disposed of the Writ Petition in the following manner:

"4. We are of the view, the question whether a Writ Petition is maintainable against a private college need not be gone into in the facts and circumstances of this case. The enquiry ordered against the petitioner has reached its final stage. Enquiry report has already been served on the petitioner. The management is yet to take a final decision on the enquiry report. On the basis of the enquiry report, if the management imposes any punishment, petitioner has got an effective alternative remedy by way of appeal before the University Tribunal under Section 63(6) of the M.G.University Act. Since the management is

yet to take a final decision on the basis of the enquiry report and as the petitioner has an effective alternative remedy of filing an appeal before the Tribunal, we feel it unnecessary to pronounce upon the question whether the writ petition is maintainable or not. We therefore leave that question open to be decided in appropriate proceeding. We also make it clear that if the petitioner has got a contention that the disciplinary proceedings were initiated without jurisdiction it is always open to him to raise the same before the Tribunal."

7. When the matter came up for hearing before the Division Bench, it was contended by learned counsel appearing for the management that as per the earlier judgment of the Full Bench, the Full Bench has relegated the petitioner to file appeal before the Tribunal under Section 63(6) of the Act, 1985, hence, the remedy of the petitioner is to approach the University Appellate Tribunal, whereas before the learned Division Bench the petitioner contended that Exhibit P14 order dated 12.10.2004, which is impugned in the Writ Petition, is not an order of

punishment, but only an order informing the petitioner that the petitioner's deputation has been terminated and he has been reverted to the post of Selection Grade Lecturer in English in the 5th respondent College, hence, the order impugned being not issued by way of imposition of penalty, there is no other remedy, except to approach this Court.

8. The petitioner has appeared in person and placed his case with clarity by making references to several judgments of the Supreme Court in support of his contentions. The petitioner submitted that the petitioner was never issued a charge memo as required by relevant Statute, hence the entire disciplinary proceedings initiated against him were without jurisdiction. He further submitted that there was no allegation against him and the proceedings were initiated somehow to oust him from the College to accommodate certain other persons. He submitted that after receipt of show cause notice, he submitted reply, where he replied to every allegation and

the management having found that no punishment could be imposed, issued an order terminating his deputation in the College. He submitted that he was never appointed on deputation, rather he was directly appointed to the post of Principal having been recommended by the Selection Committee and approved by the University. Hence, the order dated 12.10.2004 was wholly without jurisdiction. He further submitted that although the 5th respondent while relieving the petitioner had mentioned that his lien was retained for a period of five years, but by virtue of Rule 16 of KSR, the petitioner's lien in the earlier College had come to an end on his subsequent appointment in the 4th respondent College. He submitted that the petitioner's lien in 5th respondent College being not in existence, there was no question of the petitioner being reverted to the 5th respondent College. He further submitted that there is no question of availing the alternative remedy before the Tribunal, since the appeal before the Tribunal can be filed only against a punishment imposed, whereas the order

dated 12.10.2004 cannot be said to be any punishment order within the meaning of the Act, 1985. The petitioner submitted that he thus has no remedy, except to approach this Court.

9. The petitioner, on the question of maintainability of the Writ Petition, contended that the Writ Petition before this Court is maintainable against the College, since the College is affiliated to the University receiving grant from the State and governed by the provisions of Section 85 of the Act, 1985 and the Statute framed thereunder. It is submitted that the State pays the entire salary of the staff.

10. The petitioner further submitted that he, after order dated 12.10.2004, could not join in the fifth respondent College and was out of employment for a substantial period, except for two spells of period when he obtained an employment, i.e., (1) from 15.12.2006 to 2.12.2011 and (2) from 12.9.2013 to 13.6.2014.

11. Sri.Gopala Krishna Kurup, learned Senior Counsel appearing for the fourth respondent contended that the Writ Petition against the fourth respondent College is not maintainable. He submitted that the fourth respondent College is a minority institution, which has a right to appoint its Principal and also a right to terminate the Principal. He submitted that the petitioner's appointment was in fact a term appointment for five years only and it was only at the instance of the University that the appointment letter dated 3.7.2000 was sent to the University, which did not mention any term of the appointment. He submitted that the petitioner having been appointed only for a period of five years in the College, there was no error in passing the order dated 12.10.2004 terminating the deputation of the petitioner. He further submitted that even if it is held that the Writ Petition is maintainable, the petitioner cannot be allowed reinstatement in the College, since the contract of service cannot be specifically enforced by this Court exercising power under Article 226 of the Constitution of India. He

submitted that the prayer of the petitioner being essentially a prayer seeking specific enforcement of contract, cannot be granted by this Court in exercise of power under Article 226 of the Constitution. He further submitted that the suspension order read with the statement of facts communicated to the petitioner constitutes charges against the petitioner and the submission of the petitioner that no charge sheet is issued is incorrect. He submits that in the disciplinary enquiry the disciplinary authority found the charge against the petitioner proved, but the College took a lenient view by terminating his deputation, so that he may be reverted back to his original College, i.e., the 5th respondent in the post of Selection Grade Lecturer in English. He submitted that the petitioner having been reverted to his original College, there is no prejudice to the petitioner.

12. We have considered the submissions of learned counsel on both sides and perused the records.

13. From the submissions of learned counsel for the parties and the pleadings on record, following are the issues, which arose for consideration before the Full Bench:

(I) Whether the Writ Petition filed by the petitioner challenging the order dated 12.10.2004 and seeking other reliefs as quoted above is maintainable under Article 226 of the Constitution of India, the fourth respondent being minority private institution affiliated to the University and receiving aid from the Government?

(II) Whether Exhibit P14 order dated 12.10.2004 is an order imposing punishment within the ambit of Section 63 of the Act, 1985 and has the petitioner statutory remedy to file appeal before the University Tribunal under section 63(6) of the Act, 1985?

(III) Whether the appointment of the petitioner to the post of Principal can be treated to

be an appointment on deputation for a period of five years terminable at the instance of the management of the fourth respondent College?

(IV) Whether the termination of the petitioner from the post of Principal in the manner as carried out by the fourth respondent is contrary to the provisions of the Act, 1985 and the Statutes framed thereunder?

(V) What relief the petitioner is entitled to in the present Writ Petition?

ISSUE NO.(I) - MAINTAINABILITY

14. The fourth respondent College being a minority institution, affiliated to the M.G.University and salary of teachers and staff being paid under the direct payment scheme by the Government, whether against the action impugned in a Writ Petition is maintainable under Article 226 of the Constitution is the question to be answered. The Full Bench judgment on which reliance was placed by

learned counsel for the management is ***Madhavan Pillai's case (supra)***. The facts and ratio of the Full Bench is as follows:

15. In the above case a teacher of a private College was dismissed pursuant to disciplinary enquiry. The College was affiliated to the Kerala University under the Kerala University Act, 1974. The Statute provides for procedure for imposing penalty challenging the disciplinary action. It was contended that the management itself being the accuser cannot conduct the enquiry either directly or indirectly. It was submitted that the action was alleged to be in violation of principles of natural justice. Objection was raised by the management that the Writ Petition is not maintainable. The Writ Petition was dismissed. The matter reached before a Full Bench. The Full Bench observed that the College concerned being purely a private College, affiliated no doubt to the University, but the affiliation would not make it a statutory body, nor give the teacher a statutory status. Following was held by the Full Bench in paragraphs 9 and 10 of the judgment:

" 9. We may also observe that we see nothing wrong on principle in vesting the disciplinary powers and powers of enquiry in the management vis a vis the private teachers under its employment. In an allied sphere, relating to the power to take disciplinary proceedings against teachers of private aided institutions, it was ruled by Mathew, J. of this Court (as he then was) in P. R. Mamoo v. Manager, Mooveri Mapala L. P. School (1968 KLT 537) that the right belongs to the management and not to the educational authorities. This was responsible for the introduction of S.12A in the Kerala Education Act. This aspect of the matter apart, we are also not satisfied that at this stage the petitioner has made out any case for interference under Art.226. The college concerned is a purely private college, affiliated no doubt to the University but that would not make it a statutory body, nor give the teacher a statutory status. In the absence of these, it has been well recognised by series of decisions that the aggrieved teacher would not be entitled to relief under Art.226. In Vidya Ram v. S. J. N. College (AIR 1972 SC 226) Mathew, J., surveyed the case law on the subject with special reference, in particular to the Vidyodaya University's case (1964 (3) All. E.R. 865) and to the decision of the House of Lords in Malloch v. Abordeen Corpn. (1971 (1) WLR 1578) and the many decisions of the Supreme Court, and

summarised the position thus:

> *"13. Besides, in order that the third exception to the general rule that no writ will lie to quash an order terminating a contract of service, albeit illegally, as stated in 1964 (3) SCR 55 = (AIR 1964 SC 1680) might apply, it is necessary that the order must be the order of a statutory body acting in breach of a mandatory obligation imposed by a statute. The college, or the managing Committee in question, is not a statutory body and so the argument of Mr. Setalvad that the case in hand will fall under the third exception cannot be accepted. The contention of counsel that this Court has subsilentio sanctioned the issue of a writ under Art.226 to quash an order terminating services of a teacher passed by a college similarly situate in (1965) 2 S.C.R. 713 and, therefore, the fact that the college or the managing committee was not a statutory body was no hindrance to the High Court issuing the writ prayed for by the appellant has no merit as this Court expressly stated in the judgment that no such contention was raised in the High Court and so it cannot be allowed to be raised in this Court."*

The principle was reaffirmed recently in Vaish College case (AIR 1976 SC 888) where the court observed:

> *"It seems to us that before an institution can be a statutory body it must be created by or under the statute and owe its existence to a statute. This must be the primary thing which has got to be established. Here a distinction must be made between an institution which is not created by or under a statute but is*

governed by certain statutory provisions for the proper maintenance and administration of the institution. There have been a number of institutions which though not created by or under any statute have adopted certain statutory provisions, but that by itself is not, in our opinion, sufficient to clothe the institution with a statutory character. In Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi (AIR 1975 SC 1331 at p. 1339) this Court clearly pointed out as to what constitutes a statutory body. In this connection my Lord A. N. Ray. C. J. observed as follows:

'A company incorporated under the Companies Act is not created by the Companies Act but comes into existence in accordance with the provisions of the Act. It is not a statutory body because it is not created by the statute. It is a body created in accordance with the provisions of the statute.'

It is, therefore clear that there is a well marked distinction between a body which is created by the statute and a body which after having come into existence is governed in accordance with the provisions of the statute. In other words the position seems to be that the institution concerned must owe its very existence to a statue which would be the fountain head of its powers. The question in such cases to be asked is, if there is no statute

would the institution have any legal existence. If the answer is in the negative, then undoubtedly it is a statutory body, but if the institution has a separate existence of its own without any reference to the statute concerned but is merely governed by the statutory provisions it cannot be said to be a statutory body.'

In Arya Vidya Sabha, v. Kashi K. K. Srivastava (AIR 1976 SC 1073) the same position was repeated in regard to the Dayanand Mahavidyalaya Degree College, Varanasi, an institution affiliated to the Banaras Hindu University. It was said that it was not creature of the statute but an entity like a company or a cooperative society or other Body created under the statute. The matter arose out of proceedings in a suit. The same was the position in regard to the Vaish College.

10. Commissioner, Lucknow Division v. Prem Lata (AIR 1977 SC 334) the question directly arose in writ proceedings in regard 10 Colvin Taluqdars' College, Lucknow, run by a society registered under Societies' Registration Act. The disciplinary action taken by the college against a teacher was sought to be quashed in writ proceedings. It was observed:

> *"It is not correct to think that since the college has to have a committee of management as required by S.16A a managing committee that looks after the affairs of the basic section of*

> *the college must also be functioning as a statutory body discharging duties under the Intermediate Education Act and governed by the Regulations framed thereunder. The Division Bench sought support for the view it had taken from some provisions in the Educational Code of Uttar Pradesh but as pointed out by the learned single Judge, the Code is only a compilation of the various administrative rules and orders relating to educational institutions in the State and has no statutory force.*"
>
> *The decision is directly applicable."*

16. From the facts and circumstances of the case and the pleadings on record, it is clear that the Writ Petition has been filed challenging violation of statutory provisions by the management. The petitioner contends that the action of the management terminating the service of the petitioner is in violation of the provisions of the Act, 1985 as well as Chapter XLV of the M.G.University Statutes, 1997.

17. There is no dispute that salary of teachers and employees is being paid by the State. The fourth

respondent College is undoubtedly a private body, but it is obliged to carry on its function as per the statutory obligations imposed by the Act, 1985 and the Statutes framed thereunder. The judgment of the Apex Court in ***Andi Mukta S.M.V.S.S.J.M.S. Trust and others v. V.R.Rudani and others*** [(1989)2 SCC 691] has been relied on by the petitioner to support his submission that the Writ Petition is fully maintainable. The Writ Petition in the above case was filed by a Trust and trustees of an institution, which was affiliated with Gujarat University and governed by the provisions of the Act and the Statute. The argument raised was that the Trust being a private body, no mandamus can be issued. The Apex Court, while examining the scope and ambit of Article 226 of the Constitution, has laid down the following in paragraphs 17, 19, 20, 21 and 22:

> ***"17.*** *There, however, the prerogative writ of mandamus is confined only to public authorities to compel performance of public duty. The "public authority" for them means everybody which is created by statute — and whose powers and duties*

are defined by statute. So government departments, local authorities, police authorities, and statutory undertakings and corporations, are all "public authorities". But there is no such limitation for our High Courts to issue the writ "in the nature of mandamus". Article 226 confers wide powers on the High Courts to issue writs in the nature of prerogative writs. This is a striking departure from the English law. Under Article 226, writs can be issued to "any person or authority". It can be issued "for the enforcement of any of the fundamental rights and for any other purpose".

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19. *The scope of this article has been explained by Subba Rao, J., in Dwarkanath v. ITO: (SCR pp. 540-41)*

> *"This article is couched in comprehensive phraseology and it ex-facie confers a wide power on the High Courts to reach injustice wherever it is found. The Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs also is widened by the use of the expression "nature", for the said expression*

does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High Court to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under Article 226 of the Constitution with that of the English courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of Government into a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the article itself."

20. *The term "authority" used in Article 226, in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words "any person or authority" used in Article 226 are, therefore, not to be confined only*

to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed, if a positive obligation exists mandamus cannot be denied.

21. *In Praga Tools Corpn. v. C.A. Imanual this Court said that a mandamus can issue against a person or body to carry out the duties placed on them by the statutes even though they are not public officials or statutory body. It was observed: (SCC p. 589, para 6 : SCR p. 778)*

> *"It is, however, not necessary that the person or the authority on whom the statutory duty is imposed need be a public official or an official body. A mandamus can issue, for instance, to an official of a society to compel him to carry out the terms of the statute under or by which the society is constituted or governed and also to companies or corporations to carry out duties placed on them by the statutes authorising their undertakings. A mandamus would also lie against a company constituted by a statute for the purpose of fulfilling public*

responsibilities. (Cf. Halsbury's Laws of England, 3rd Edn., Vol. II, p. 52 and onwards.)"

22. *Here again we may point out that mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute. Commenting on the development of this law, Professor de Smith states: "To be enforceable by mandamus a public duty does not necessarily have to be one imposed by statute. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract."We share this view. The judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into watertight compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available "to reach injustice wherever it is found". Technicalities should not come in the way of granting that relief under Article 226. We, therefore, reject the contention urged for the appellants on the maintainability of the writ petition."*

18. A private body on which public duty has been imposed by a Statute, can thus be commanded to perform statutory duty and any violation in performance of

statutory duty can be complained in writ proceeding; thus where allegation of statutory violation is made, Writ Petition is clearly maintainable under Article 226 of the Constitution. Another recent judgment, which has been referred to by learned counsel for the management is ***Ramesh Ahluwalia v. State of Punjab*** [(2012)12 SCC 331], which fully supports the submission of the petitioner that the Writ Petition is maintainable. Following was laid down in paragraph 12 of the judgment:

> ***"12.*** *We have considered the submissions made by the learned counsel for the parties. In our opinion, in view of the judgment rendered by this Court in Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust there can be no doubt that even a purely private body, where the State has no control over its internal affairs, would be amenable to the jurisdiction of the High Court under Article 226 of the Constitution, for issuance of a writ of mandamus. Provided, of course, the private body is performing public functions which are normally expected to be performed by the State authorities."*

19. A Full Bench of the Allahabad High Court in ***Aley Ahmad Abdi v. District Inspector of Schools and others*** (1976 AWC 731 All.) has also held that Writ Petition against a private management committee is fully maintainable, if violation of statutory provisions is alleged. The following was observed in paragraphs 20 to 26 of the judgment:

> *"20. We shall now consider the second part of the question referred to us. Though a writ is generally issue to the Government or a public authority or a statutory body, there may be circumstances in which a writ may have to be issued to a person or body which is not statutory. In Prag Tools Corporation v. C.V. Inanual : AIR 1969 SC 1306 at page 1309-10, the Supreme Court observed thus:*
>
> *An order of mandamus is, in form, a command directed to a person corporation or an inferior tribunal requiring him or them to do a particular thing therein specified which appertains to his or their office and is in the nature of a public duty. It is, however, not necessary that the person or the authority on whom the statutory duty is imposed need be a public official or an official body. A mandamus can issue, for instance, to an official or*

of a society to compel him to carry out the terms of the statute under or by which the society is constituted or governed and also to companies or corporations to carry out duties placed on them by the statutes authorising their undertakings.

In Hatsbury's Laws of England (III Edition) Volume 30, at page 682, it is stated that a natural or individual person might, when acting in execution of a public duty, be a public authority.

21. In Miss Kumkum Khanna v. The Principal Jesus and Marry College AIR 1976 Del 35, a Division Bench of the Delhi High Court, after referring to the passage in Section A. De Smith's Judicial Review of Administrative Action (3rd edition) at page 341, observed thus at page 38:

On the other hand, the use of the word 'person' in the above statements of law in relation to mandamus and certiorari would show that the person or authority against whom these remedies are given need not be invariably created by a statute. Only a legal person can be created by a statute. But these writs can be issued against a natural person provided that he is exercising a public or a statutory power or doing a public or a statutory duty.

22. In the above case, the Delhi High Court issued a writ to the Principal of a private college on the ground that the principal was conferred with

powers under ordinances of the University of Delhi regarding attendance of the students and that hence the exercise of such powers was subject to the jurisdiction under Article 226 of the Constitution.

23. In Rameshswarup Gupta v. Madhya Pradesh State Cooperative Marketing Federation Ltd. : AIR 1976 MP 125, one of the questions before a Full Bench of the Madhya Pradesh High Court was whether a writ in the nature of Mandamus can be issued to a Cooperative Society registered under the Madhya Pradesh Cooperative Societies Act, 1960. After holding that such a cooperative society is not a statutory body, the Full Bench observed thus:

...normally such Societies (Cooperative Societies registered under the provisions of the M.P. Cooperative Societies Act, 1960) will not be amenable to writ jurisdiction of the High Court except in cases where according to the provisions of the Statute or rule or regulations framed under the Act by which the Society is governed, there is a statutory or public duty imposed on it, and the enforcement of which is being sought.

...

Whenever, it is pointed out that any statutory provisions requiring the Society to act in a particular manner creates a right or interest in

favour of the person concerned, it will be permissible for such person to approach the High Court for seeking the writ of mandamus to direct the statute, and not commit breach of the same. Thus, we would like to make it clear that the cooperative Society will be amenable to writ jurisdiction only in cases relating to performance of legal obligations and duties imposed by a statute creating a corresponding legal right in one.

24. We are in respectful agreement with the aforesaid enunciation of law by the High Courts of Delhi and Madhya Pradesh.

25. Sri Hyder also fairly conceded that in the light of the pronouncement of the Supreme Court in Praga Tools Corporation's case (Supra), even if the Committee of Management of a recognised Intermediate College is held to be a non-statutory body, such Committee will still be amenable to the writ jurisdiction of the High Court, where such committee is entrusted with performance of statutory duties or conferred with statutory powers.

26. As a result of the foregoing discussion, our answer to the question referred by learned Single Judge is as follows:

> *The Committee of Management of an Intermediate College is not a statutory body. Nevertheless, a writ petition filed against it is maintainable if such petition is for*

> *enforcement of performance of any legal obligations or duties imposed on such Committee by a statute."*

20. Now we come to the Full Bench decision in ***Madhavan Pillai's case (supra)***. The Full Bench held that the Writ Petition is not maintainable relying on two judgments of the Apex Court, namely, ***Vidya Ram v. S.J.N.College*** (AIR 1972 SC 1450) and ***Commissioner Lucknow Divison v. Prem Lata*** (AIR 1977 SC 334). ***Vidya Ram's case (supra)*** was a case where the appellant had filed Writ Petition challenging resolution of the Managing Committee terminating his services and praying for an appropriate writ. The learned Single Judge allowed the Writ Petition holding that the Managing Committee acted in violation of the principles of natural justice and quashed the resolution. In the appeal the High Court found that the relationship between the appellant and the College was that of a servant and master and the appellant was to file a suit for damages, against which judgment, the matter went to the Apex Court. Paragraphs

12 and 13 of the judgment was relied on by the Full Bench, which are to the following effect:

> *"12. Whereas in the case of Prabhakar Ramkrishna Jodh v. A. L. Pande, (1965) 2 SCR 713,the terms and conditions of service embodied in clause 8 (vi) (a) of the 'College Code' had the force of law apart from the contract and conferred rights on the appellant there, here the terms and conditions mentioned in Statute 151 have no efficacy, unless they are incorporated in a contract. Therefore, appellant cannot found a cause of action on any breach of the law but only on the breach of the contract. As already indicated, Statute 151 does not lay down any procedure for removal of a teacher to be incorporated in the contract; so, clause 5 of the contract can, in no event, have event a statutory flavour and for its breach, the appellant's remedy lay elsewhere.*
>
> *13.Besides, in order that the third exception to the general rule that no writ will lie to quash an order terminating a contract of service, albeit illegally, as stated in 1964-3 SCR 55 = (AIR 1964 SC 1680) might apply, it is necessary that the order must be the order of a statutory body acting in breach of a mandatory obligation imposed by a statute. The college, or the Managing Committee in question, is not a statutory body and so the*

argument of Mr. Setalvad that the case in hand will fall under the third exception cannot be accepted.The contention of counsel that this Court has sub-silentio sanctioned the issue of a writ under Article 226 to quash an order terminating services of a teacher passed by a college similarly situate in (1965) 2 SCR 713 and, therefore, the fact that the college or the managing committee was not a statutory body was not hindrance to the High Court issuing the writ prayed for by the appellant has not merit as this Court expressly stated in the judgment that no such contention was raised in the High Court and so it cannot be allowed to be raised in this Court."

21. In ***Vidya Ram's case (supra)*** an earlier judgment of the Apex Court reported in ***Prabhakar Ramkrishna Jodh's case (supra)*** was cited. It is relevant to notice the ratio laid down by the Apex Court in ***Prabhakar Ramkrishna Jodh's case (supra)***, which was the judgment delivered by a four Judge Bench. In the above case, the appellant was working as the Lecturer in S.B.R.College, which was affiliated under the University of Saugar Act, 1946. The appellant's services were terminated, against which order, a Writ Petition was filed by the appellant

under Article 226 of the Constitution praying for quashing the termination order. The appellant's case was that termination of the appellant was in violation of the provisions of Clause 8(vi)(a) of the College Code, hence the order was ultra vires and illegal. The High Court rejected the application and held that the services of the appellant were not governed by the College Code, but by the contract made between the governing body and the appellant. Hence, the remedy under Article 226 of the Constitution was not available and proper recourse for the petitioner was to bring the suit in the Civil Court. Against the judgment of the High Court, an appeal was filed before the Apex Court. The Apex Court noted that the College Code has been made by the University in exercise of statutory power and the College Code have force of law. The Apex Court held that the College Code confers legal rights in favour of the teacher and the view taken by the High Court is erroneous. It is useful to quote the following observation of the High Court:

"It is not disputed on behalf of the respondents that the "College Code" has been made by the University in exercise of statutory power conferred by s.32 and under s.6(6) of the Act. It is also conceded on behalf of the respondents that the "College Code" is intra vires of the powers of the University contained in s.32 read with s.6(6) of the Act. In our opinion, the provisions of Ordinance 20, otherwise called the "College code" have the force of law. It confers legal rights on the teachers of the affiliated colleges and it is not a correct proposition to say that the "College Code" merely regulates the legal relationship between the affiliated colleges and the University alone. We do not agree with the High Court that the provisions of the "College Code" constitute power of management. On the contrary we are of the view that the provisions of the "College Code" relating to the pay scale of teachers and their security of tenure properly fall within the statutory power of affiliation granted to the University under the Act. It is true that Clause 7 of the Ordinance provides that all teachers of affiliated colleges shall be appointed on a written contract in the form prescribed in Sch. A but that does not mean that teachers have merely a contractual remedy against the Government Body of the College. On the other hand, we are of opinion that the provisions of Clause 8 of the Ordinance relating

> *to security of the tenure of teachers are part and parcel of the teachers' service conditions and, as we have already pointed out, the provisions of the "College Code" in this regard are validly made by the University in exercise of the statutory power and have, therefore, the force and effect of law. It follows, therefore, that the "College Code" creates legal rights in favour of teachers of affiliated colleges and the view taken by the High Court is erroneous."*

The Apex Court allowed the appeal and set aside the judgment of the High Court and remanded the matter to the High Court for investigating the question whether there was violation of procedure contained in Clause 8(vi) (a) of the College Code. One of the arguments raised before the Apex Court by the respondent was that the governing body of the College was not a statutory body performing public duty and no writ in the nature of mandamus may, therefore, be issued. It was conceded by the respondent that the said objection was not pressed before the High Court. The Apex Court, thus, did not entertain the said objection. It is useful to quote the

following observation made by the Apex Court:

> *".....It was contended on behalf of the respondents in the second place that the Governing Body of the College was not a statutory body performing public duties and no writ in the nature of mandamus may, therefore, be issued to the Governing Body of the College. On behalf of the respondents it was conceded that these objections were not pressed before the High Court. We are, therefore, unable to entertain these preliminary arguments at this stage and they must be over-ruled."*

22. The Apex Court in the above judgment clearly laid down that in case where there is statutory violation in terminating services of the teacher, the Writ Petition can be entertained under Article 226 of the Constitution. The Apex Court set aside the judgment of the High Court dismissing the Writ Petition as not maintainable and remanded the matter for fresh consideration by the High Court.

23. ***Vidya Ram's case (supra)*** was also a case of termination of services of a teacher by the Managing

Committee. The termination was challenged on the ground that the Managing Committee acted in violation of principles of natural justice. The learned Single Judge had allowed the Writ Petition against which appeal was filed. The Division Bench allowed the appeal and dismissed the Writ Petition against which order the matter was taken in the Apex Court. In ***Vidya Ram's case (supra)*** reliance was made by learned counsel for the appellant on ***Prabhakar Ramkrishna Jodh's case (supra).*** The Apex Court noted the ratio in ***Prabhakar Ramkrishna Jodh's case (supra)*** and held that the Writ Petition was rightly entertained. Following was laid down in paragraph 9 of the judgment in ***Vidya Ram's case (supra):***

> ***"****9. Mr. Setalvad contended that since the college in question is affiliated to a statutory body, namely, the University of Lucknow, and is governed by the relevant statutes and ordinances framed under the provisions of Lucknow University Act, 1920, any violation of the statute or the ordinance in the matter of terminating the services of a teacher would attract the jurisdiction of the High Curt under Article 226 of the Constitution as*

statutes and ordinances have the force of law. In support of this, counsel relied upon the decision of this Court in Prabhakar Ramakrishna Jodh v. A. L. Pande, (1965) 2 SCR 713. The appellant before this Court in that case was a teacher in a college affiliated to the University of Saugar and managed by the Governing Body established under the provisions of the relevant ordinance made under the University of Saugar Act. Certain charges were framed against the appellant by the Principal of the College and he was asked to submit his explanation. The appellant in his explanation denied all the charges and requested for particulars on which one of the charges was based. The particulars were not supplied and the Governing. Body terminated his services without holding any enquiry. The appellant moved the High Court under Article 226 of the Constitution for a writ quashing the order of the Governing Body and for his reinstatement. He contended that the Governing Body had made the order in violation of the provisions of Ordinance 20, otherwise called the 'College Code', framed under section 32 of the University of Saugar Act read with section 6 (6) of that Act. Clause 8 (vi) (a) of the college Code provided that the Governing body of the college shall not terminate the services of a confirmed teacher without holding an enquiry and without

giving him an opportunity of defending himself. The High Court held that the conditions of service of the appellant were governed not by the 'College Code' but by the contract made between the Governing Body and the appellant under clause 7 of the College Code-which stated that all teachers of the college shall be appointed under a written contract in the form prescribed-that the provisions of the 'College Code' were merely conditions prescribed for affiliation of colleges and that no legal rights were created by the 'college Code' in favour of the teachers of the affiliated Colleges as against the Governing Body. The High Court, therefore, dismissed the petition. In appeal to this Court it was held that the 'College Code' had the force of law and that it not merely regulated the legal relationship between the affiliated colleges and the University but also conferred legal rights on the teachers of affiliated colleges. The Court further said.

"It is true that Clause 7 of the Ordinance provides that all teachers of affiliated colleges shall be appointed on a written contract in the form prescribed in Sch A but that does not mean that teachers have merely a contractual remedy against the Governing Body of the College. On the other hand, we are of opinion that the provisions of Clause 8 of the Ordinance relating to security of the

> *tenure of teachers are part and parcel of the teachers' service conditions.....*"
>
> *When once this Court came to the conclusion that the College Code' had the force of law and conferred rights on the teachers of affiliated colleges, the right to challenge the order terminating the services of the appellant, passed in violation of clause 8 (vi) (a) of the College Code in a proceeding under Article 226 followed "as the night the day" and the fact that the appellant had entered into a contract was considered as immaterial."*

The observation of the Apex Court in the above paragraph clearly culls out the ratio that if the Court comes to the conclusion that the College Code had the force of law and conferred rights on the teachers of affiliated Colleges, the right to challenge the order terminating services of the appellant, passed in violation of Clause 8(vi)(a) of the College Code in a proceeding under Article 226 of the Constitution followed 'as the night the day'. Thus, the ratio laid down by the Apex Court in four Judge Bench's judgment in ***Prabhakar Ramkrishna Jodh's case (supra)*** was followed. The Apex Court further in

Vidya Ram's case (supra) has laid down that the terms and conditions of service in Statute 151 have not been incorporated in the agreement, they have no force of law. The following was laid down by the Apex Court in paragraphs 10, 11 and 12 of the judgment:

> *"10. In the case in hand, the position is entirely different. The relevant statutes governing this case are statutes 151, 152 and 153, framed under the provisions of the Lucknow University Act, 1920. Statute 151 provides that teachers of an Associated College including the principal shall be appointed on written contract and that the contract shall inter alia provide the conditions mentioned therein in addition to such other conditions not inconsistent with the Act and the Statutes as an Associated College may include in its own form of agreement. Then the conditions as regards salary, age of retirement, etc., are enumerated. The statute then goes on to specify the grounds on which a teacher's services can be terminated. Statute 152 states that the form of agreement to be adopted by each college shall be approved by the*

executive Council before it is put in force. Statute 153 provides for a form of agreement which shall serve as a model. It may be noted that statute 151 does not provide for any particular procedure for dismissal or removal of a teacher for being incorporated in the contract. Nor does the model form of contract lay down any particular procedure for that purpose. The appellant had entered into an agreement when he was employed in the college. Clause 5 of the agreement provided that:

"the period of probation shall be one year unless extended by the Managing Committee and the College may at any time during the said period of probation put an end to this engagement, or if service shall continue beyond the said term, at any time thereafter, dispense with the services of the said Lecturer without notice, if the Managing Committee of the said College is satisfied that it is necessary to remove the said Lecturer for misconduct, insubordination or habitual neglect of duty on the part of the said Lecturer or in case any of the conditions herein specified have been

broken by the said Lecturer provided that an opportunity is given to him by the said Managing Committee to give his explanation before a decision is arrived at."

11.On a plain reading of statute 151, it is clear that it only provides that the terms and conditions mentioned therein must be incorporated in the contract to be entered into between the college and the teacher concerned. It does not say that the terms and conditions have any legal force, until and unless they are embodied in an agreement. To put it in other words, the terms and conditions of service mentioned in Statute 151 have proprio vigore no force of law. They become terms and conditions of service only by virtue of their being incorporated in the contact. Without the contract, they have no vitality and can confer no legal rights.

12. Whereas in the case of Prabhakar Ramkrishna Jodh v. A. L. Pande, (1965) 2 SCR 713,the terms and conditions of service embodied in clause 8 (vi) (a) of the 'College Code' had the force of law apart from the contract and conferred rights on the appellant

there, here the terms and conditions mentioned in Statute 151 have no efficacy, unless they are incorporated in a contract. Therefore, appellant cannot found a cause of action on any breach of the law but only on the breach of the contract. As already indicated, Statute 151 does not lay down any procedure for removal of a teacher to be incorporated in the contract; so, clause 5 of the contract can, in no event, have event a statutory flavour and for its breach, the appellant's remedy lay elsewhere."

24. After making the above observation in the case of ***Vidya Ram's case (supra)*** earlier judgment of ***Prabhakar Ramkrishna Jodh's case (supra)*** was distinguished on the premise that the service conditions of ***Vidya Ram's case (supra)*** are not governed by the statutory provision and hence, the ratio of ***Prabhakar Ramkrishna Jodh's case (supra)*** is not applicable. The ratio in ***Prabhakar Ramkrishna Jodh's case (supra)*** was, thus, approved and followed. However, in paragraph 13 of the judgment, the Apex Court held that in order that

the third exception to the general rule that no writ will lie to quash an order terminating a contract of service might apply, and for that it is necessary that the order must be the order of a statutory body acting in breach of a mandatory obligation imposed by a Statute. The Apex Court held that the College or Managing Committee in question is not a statutory body and so, the argument of counsel for the appellant that the case in hand will fall under the third exception cannot be accepted. In the above context, the contention of Mr.Setalvad, counsel for the appellant that the fact that the College or the Managing Committee was not a statutory body was no hindrance to the High Court issuing a writ and an observation was noted in paragraph 13 of the judgment in ***Vidya Ram's case (supra)*** and it was observed that the said contention has no merit, since the Apex Court in ***Prabhakar Ramkrishna Jodh's case (supra)*** had expressly stated that no such contention was raised in the High Court and so, it cannot be raised. The fact that in

Prabhakar Ramkrishna Jodh's case (supra) the objection raised by the respondent in that Writ Petition regarding entertainability of Writ Petition against a non statutory body was not allowed to be raised, cannot lead to the conclusion that the Apex Court accepted the said objection as a valid objection to entertainability of the Writ Petition.

25. In view of the above, it is clear that the ratio of four Judge judgment in ***Prabhakar Ramkrishna Jodh's case (supra)*** that a Writ Petition can be entertained at the instance of a teacher of a private College affiliated to the College, whose service conditions are governed by a statutory provision still holds good and no tinkering of the said ratio can be read in ***Vidya Ram's case (supra).*** The Full Bench of this Court in ***Madhavan Pillai's case (supra)*** followed the judgment in ***Vidya Ram's case (supra)*** without referring to the ratio of ***Prabhakar Ramkrishna Jodh's case (supra),*** which was a four Judge Bench judgment and was binding.

26. The second case relied on by the Full Bench is ***Prem Lata's case (supra)***, where services of a teacher in Basic Section of the College was terminated. It was held by the Supreme Court that Basic Section is not a part of recognized institution. Recognized institution is governed by the statutory provisions of the Uttar Pradesh Intermediate Education Act, 1971 and the Regulation framed thereunder. It was held that since the Basic Section is not a part of the recognized institution, it was not governed by any statutory rule. On that basis the Supreme Court held that the Writ Petition will not lie. It is useful to quote paragraph 3 of the judgment, which is to the following effect:

> *"3. It seems clear from the provisions set out above that they all relate to recognised institutions; recognition is by the Board for the purpose of preparing candidates for admission of the Board's examination, and Board means the Board of High School and Intermediate Education. The basic section of school cannot therefore, be part of a recognised institution. We are unable to agree with the view taken by the Division Bench of the High Court that the basic section is an integral part of*

the institution and therefore, must be governed by the provisions of the Intermediate Education Act, 1921. A school by extending its operation to fields beyond that covered by the Act cannot extend the ambit of the Act to include in its sweep these new fields of education which are outside its scope. The case of the appellants on this point appears from this counter-affidavit filed by them in answer to the writ petition. It is said that "the college is running the Basic Section independently and is neither registered by the Government or affiliated by any local body and neither any grant in aid is being taken by the department to run this section accordingly.The college has its own rules and regulations to conduct the Basic Section". It is not correct to think that since the college has to have a committee of management as required by Section 16-A, a managing committee that looks after the affairs of the Basic Section of the college must also be functioning as a statutory body discharging duties under the Intermediate Education Act and governed by the Regulations framed thereunder. The Division Bench sought support for the view it had taken from some provisions in the Educational Code of Uttar Pradesh but, as pointed out by the learned single Judge, the Code is only a compilation of the various administrative rules and orders relating to educational institutions in the State and

has no statutory force. For the reasons stated above, it must be held that the appellants were not discharging any statutory function in making the impugned orders affecting the respondent. The appeal is accordingly allowed, the Judgment of the Division Bench is set aside and that of the Single Judge restored. There will be no order as to costs."

27. The aforesaid two judgments of the Supreme Court did not lay any ratio that even if there is a statutory breach, Writ Petition will not lie. The Full Bench relied on a ratio in those two judgments, which was not there. Further, the judgment of the Apex Court, as noted above in ***Andi Mukta SMVSSJMS Trust's case*** (supra) and ***Ramesh Ahluwalia's case (supra)*** and ***Prabhakar Ramkrishna Jodh's case (supra)*** are clearly applicable in the present case which lays down that a Writ Petition is maintainable if there is violation of statutory obligation. In view of the judgments of the Apex Court, as noted above, the Writ Petition is clearly maintainable and we are of the view that the Full Bench judgment of this Court in ***Madhavan Pillai's case (supra)*** cannot be followed in view of the

clear pronouncement laid down by the Apex Court as noted above.

28. The service conditions of a Principal and teachers of an affiliated College are governed by the statutory provisions. The Writ Petition, at the instance of such teacher or Principal, is thus, clearly maintainable. We, thus, answer Issue No.I in favour of the petitioner.

Issue Nos.II, III and IV:

29. Issue Nos.II, III and IV being connected, are taken together. A vacancy in the post of Principal arose on retirement of an earlier incumbent with effect from 3.7.2000. An advertisement was published on 8.5.2000 in University News, which is to the following effect:

> *"Applications are invited from qualified competent and experienced persons to be appointed as Principal in the above college under the Educational Agency of St.Mary's Jacobite syrian Church, Manarcad. Qualification, age and experience as prescribed by University/Government. Apply within one month from the date of this notification to the*

Manager with full bio-data, attested copies of certificates, passport size photograph and contact telephone number."

30. The advertisement clearly indicates that applications were invited as the appointment on the post of Principal was by direct recruitment. Exhibit P2 is the report of the Staff Selection Committee, which has been brought on record. Exhibit P2 clearly indicates that the Selection Committee was constituted in accordance with the Statute, i.e., Chapter XLV of the M.G.University Statutes, 1997. The Selection Committee consisted of two Government representatives and one University representative. The said selection was forwarded to the University for approval and the University, vide order dated 31.3.2001, has approved the appointment of the petitioner in the retirement vacancy of one Prof.K.M.Varghese. The appointment letter was issued to the petitioner on 3.7.2000. The advertisement, proceedings of the Selection Committee, appointment order as well as approval by the University clearly prove

that the appointment of the petitioner to the post of Principal was made by direct recruitment in a vacancy caused by retirement. The appointment of the petitioner was not on deputation. Appointment on foreign service, i.e, deputation can be made with the approval of the State Government as per the statutory provisions. Following is the relevant provisions of the Statute, 1997 in this context:

> *"31. **Foreign Service**: (1) It shall be competent for the Educational Agency to depute a teacher to foreign service as laid down in Chapter XI of Part I of the Kerala Service Rules for a period not exceeding five years. In the case of those private college coming under the Direct Payment Scheme, the prior permission of the Government shall be obtained."*

31. Learned counsel for the management submitted that the management had appointed the petitioner only for five years, but the said term was not mentioned in the papers, which were submitted to the University, since the

University had objection against any limited appointment. From the papers, which have been forwarded by the management to the University, it is clear that the appointment was not for a period of five years and the University had granted approval on a retirement vacancy without there being any limitation of tenure.

32. The Act and the Statute provide a procedure for filling up of a substantive vacancy by direct recruitment. The substantive vacancy is filled up by direct recruitment. According to the procedure prescribed in the Statute, appointment to the substantive vacancy under the Act and Statute is not an appointment on any contract or appointment fixed for a limited period. The appointment made to a substantive vacancy cannot be claimed to be made for any fixed period, since permitting the management to make substantive appointment to a retirement vacancy for a fixed period will be nothing, but giving arbitrary power to the management in making appointment which will lead to arbitrariness and illegality.

The Statute does not contemplate any fixed term of appointment to a substantive vacancy, hence, the submission of learned counsel for the management that appointment of the petitioner for a period of five years cannot be accepted, nor the submission that the appointment was on deputation can be accepted.

33. Now, we come to the order dated 12.10.2004, by which the petitioner's appointment as Principal has been terminated. It will be useful to extract the entire order dated 12.10.2004, which is to the following effect:

> *"You were appointed as Principal of St.Mary's College, Manarcaud, Malam P.O., Kottayam, Pin-686 031 on 3.7.2000 on deputation for a period of five years, retaining your lien in the post of Selection Grade Lecturer in English in the Mar Athanasius College, Kothamangalam for a period of 5 years from 3.7.2000. The Governing Board of St.Mary's College, Manarcaud, Malam P.O., Kottayam, Pin-686 031 which met on 8.10.04 has unanimously resolved to terminate your appointment on deputation as the Principal of*

St.Mary's College, Manarcaud, Malam P.O., Kottayam, Pin - 686 031 with immediate effect and authorized the Manager, st.Mary's College, Manarcaud, Malam P.O., Kottayam, Pin-686 031 to issue orders in that regard. Accordingly, you are hereby informed that your appointment on deputation as Principal of St.Mary's College, Manarcaud, Malam P.O., Kottayuam, Pin-686 031 stands terminated with effect from 12.10.2004 and that you stand reverted to the post of Selection Grade Lecturer in English in the Mar Athanasius College, Kothamangalam forthwith."

34. The order indicates that the governing body has unanimously resolved to terminate **appointment on deputation as Principal** with immediate effect. Further, last sentence in the order states "you are hereby informed that your appointment on deputation as Principal of St.Mary's College, Manarcaud, Malam P.O., Kottayuam, Pin-686 031 stands terminated with effect from 12.10.2004 and that you stand reverted to the post of Selection Grade Lecturer in English in the Mar Athanasius College, Kothamangalam forthwith".

35. As noted above, the management initiated a disciplinary enquiry against the petitioner and after receipt of the enquiry report, the management issued a show cause notice to the petitioner, where it proposed two punishments, i.e., (1) removal from service; and (2) reduction to the lower post. It is useful to quote paragraph 2 of the letter dated 3.9.2004 of the management, which is to the following effect:

> *"At the outset itself I make it clear that there is no ambiguity or infirmity in the show cause notice issued by me as per proceedings dated 17.8.2004. The punishment proposed in my proceedings dated 17.8.2004 is either (1) removal from service or (2) reduction to the lower post of Selection Grade Lecturer in English in the Department of English in St.Mary's College, Manarcaud. There is no proposal for a third punishment as wrongly assumed by you in the show cause notice. A show cause notice, proposing more than one punishment in the alternative, is legally permissible. In the case on hand, the disciplinary authority is of the opinion that*

charges proved in the enquiry merit imposition of either of the two major punishments proposed in the show cause notice. You are free to show cause against the punishment proposed to be imposed in the alternative. Proposing more than one punishment in the alternative does not make the proposed action any the less definite; it gives you a better opportunity to show cause against each of the major punishments proposed to be imposed on you in the alternative."

36. Although notice was given proposing punishment, after the petitioner submitting reply to the show cause notice dated 22.9.2004, the management which was entitled to pass any penalty order against the petitioner, rather passed an order abruptly terminating the appointment as if he is on deputation. It is relevant to note that the petitioner was also asked to give option to go back to the 5th respondent College, in that event the management stated that the management shall not impose any punishment. The petitioner in his reply clearly refused to give any option of going back to the 5th respondent

College. It is further relevant to note the provisions of Section 63, which deals with disciplinary powers of Educational Agency over teachers of private colleges. Section 63(6) refers to penalties, which can be imposed. Section 63(6) of the Act, 1985 is quoted as follows:

> *"63. Disciplinary powers of Educational Agency over teachers of private Colleges.-*
>
> *xx xx xx*
>
> *(6) Any teacher aggrieved by an order imposing on him any of the following penalties, namely:-*
>
> *(a) withholding of increment;*
>
> *(b) recovery from payof any pecuniary loss caused to the institution or the monetary value equivalent to the amount of increment ordered to be withheld;*
>
> *(c) reduction to a lower rank in the seniority list or to a lower grade or post; and*
>
> *(cc) removal from servcice;*
>
> *(ccc) compulsory retirement from service.*
>
> *(d) dismissal from service,*
>
> *may within sixty days from the date on which a copy of such order is served on him,*

appeal to the Appellate Tribunal on any one or more of the following rounds, namely:-

(i) that there is want of good faith in passing the order;

(ii) that the order is intended to victimise the appellant;

(iii) that in passing the order, the educational agency has been guilty of a bsic error or violation of the principles of natural justice;

(iv) that the order is not based on any material or is perverse:

Provided that the Appellate Tribunal may admit an appeal presented after the expiration of the said period of sixty days if it is satisfied that the appellant had sufficient cause for not presenting the appeal within that period."

33. Chapter 45, Part D, Statute 73 enumerate the penalties which can be imposed in the following manner:

"73. Penalties: The following Penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on teachers of private college, namely:-

(i) Censure;

(ii) Withholding of increments or promotion;

(iii) (a) Recovery from pay of the whiole or part of any peculiary loss caused to the private college by his negligence or breach of orders;

(b) recovery from pay to the extent necessary of the monetary value equivalent to the amount of increments ordered to be withheld where such an order cannot be given effect to."

37. Under sub-section (6) of Section 63 of the Act, 1985, it is provided that against an order imposing penalty, a teacher is entitled to file appeal before the Appellate Tribunal within 60 days. The order dated 12.10.2004 is not covered with any of the penalties as enumerated in Section 63(6), hence, the order dated 12.10.2004 is beyond the purview of penalties as contemplated by Section 63(6) and Statute 73 of chapter 45 of Statute..

38. As observed above, the petitioner's appointment not being on deputation, treatment of the appointment of

the petitioner as deputation and termination of the deputation is wholly without jurisdiction and beyond the power of the management. The management could have taken disciplinary action in accordance with Section 63 of the Act, 1985 and could not in any other manner terminate the employment of the petitioner.

39. We, thus, are of the clear view that the letter dated 12.10.2004 is without jurisdiction. The petitioner, who was substantively appointed by direct recruitment after following due procedure in the Act and Rules, has been illegally and arbitrarily treated to be on deputation by the management and the order dated 12.10.2004, thus, is unsustainable and deserves to be set aside. We further observe that the order dated 12.10.2004 being not covered by any of the penalties as contemplated under Section 63(6) of the Act, 1985, there is no remedy available to the petitioner to file an appeal before the University Appellate Tribunal. Thus, neither the earlier judgment of the Full Bench of this Court dated 27.7.2004

nor the provisions of Section 63(6) shall come in the way of the petitioner approaching this Court for exercise of jurisdiction under Article 226 of the Constitution. We, thus, hold the order dated 12.10.2004 unsustainable and set aside the said order.

ISSUE NO.V

40. Now, we come to the last issue as to what relief the petitioner is entitled. The submission, which has been pressed by the learned Senior Counsel appearing for the management is that the 5th respondent being not a statutory authority, this Court, in exercise of writ jurisdiction, cannot direct reinstatement of the petitioner in service. Reliance has been placed on the Apex Court judgment in ***Executive Committee, Vaish Degree College and others v. Lakshmi Narain*** (AIR 1976 SC 888). The said case arose out of a suit filed by the respondent seeking an injunction against the management. The case of the respondent was that the College could not have terminated the respondent without

seeking approval of the Vice-Chancellor. The suit was dismissed by the learned Magistrate, but decreed by the learned Additional Civil and Sessions Judge. The Full Bench also affirmed the decree of the First Additional Civil and Sessions Judge decreeing the plaintiff's suit. After referring to various judgments of the Apex Court, the following has laid down by the Apex Court in paragraph 17 of the judgment:

> *"17. On a consideration of the authorities mentioned above, it is, therefore, clear that a contract of personal service cannot ordinarily be specifically enforced and a Court normally would not give a declaration that the contract subsists and the employee, even after having been removed from service can be deemed to be in service against the will and consent of the employer. This rule, however, is subject to three well recognized exceptions - (i) where a public servant is sought to be removed from service in contravention of the provisions of Article 311 of the Constitution of India; (ii) where a worker is sought to be reinstated on being dismissed under the Industrial Law; and (iii) where a statutory body acts in breach or violation of the mandatory provisions of the statute."*To the same effect another judgment was relied on by learned counsel for the management in ***Shri Vidya Ram Misra v. Managing Committee, Shri Jai Narain College*** [(1972)1 SCC 623].

41. Learned counsel for the management has further submitted that minority institution has right to select its Principal, hence the right of minority institution to terminate the services of its teachers has also to be conceded. There is no dispute that in the field of selection of a teacher or Principal, minority institution has certain discretion. But, selection of teachers and Principal of minority institution, which is receiving aid from the Government and affiliated to the University, has to be regulated according to the provisions and Statute as noted above. Minority institution cannot claim any unfettered right to make any selection. In so far as termination of service of a teacher of a minority institution affiliated to University and receiving aid from the State, consequent to disciplinary enquiry, the right is regulated and controlled by a statutory provision. Statute 75 provides for procedure of imposition of major penalty. The said procedure for imposing penalty is applicable to private institutions, both minority and non-minority. Thus, we do not accept the submission of learned counsel for

the College that minority institution has freedom and discretion in terminating the services of teachers and Principal, whose appointments have been approved by the University.

42. The petitioner's service was terminated by letter dated 12.10.2004. The petitioner was paid salary till September, 2004. Although as per order dated 12.10.2004, the petitioner was reverted as Lecturer in the 5th respondent College, the petitioner could not join there, since his lien in the earlier College has been terminated by Rule 16 of KSR. Rule 16 KSR is as follows:

> *"16. Unless in any case it be otherwise provided in these rules, an officer on substantive appointment to any permanent post acquires a lien on that post and ceases to hold any lien previously acquired on any other post."*

43. The petitioner was out of employment after his termination from fourth respondent College. The petitioner candidly admitted during submission that during all these periods he could not receive any appropriate employment, except for two brief periods, i.e., 15.12.2006 to 2.12.2011 and (2) from 12.9.2013 to 13.6.2014 (nine months).

44. The petitioner has also stated that the petitioner is going to attain the age of superannuation on 30.4.2015. Learned counsel for the fourth respondent in his statement has given details of payment which could have otherwise been received by the petitioner, had he continued in the employment, except for the period in which he was employed as noted above. Upto the period treating 30.4.2015 as the age of superannuation, the fourth respondent has calculated the total amount, which would have been paid to the petitioner, had he been in service as ₹50,74,364/-.

45. In the facts of the present case and in view of the submission made by learned counsel for the parties, we are of the view that interest of justice will be served in directing payment of a lump sum amount to the petitioner by the management of the fourth respondent College, instead of directing reinstatement to the post of Principal.

In the result, we allow the Writ Petition, setting aside Exhibit P14 order dated 12.10.2004 with direction to the

fourth respondent to make payment of a lump sum amount of ₹50,00,000/- (Rupees fifty lakhs only) in lieu of salary which the petitioner could have received, had he not been terminated from service. The said payment shall be made by the fourth respondent to the petitioner within three months from today.

Parties shall bear their costs.

ASHOK BHUSHAN
ACTING CHIEF JUSTICE

A.M.SHAFFIQUE
JUDGE

A.K.JAYASANKARAN NAMBIAR
JUDGE

vgs