HIGH COURT OF JUDICATURE FOR RAJASTHAN

BENCH AT JAIPUR

D.B. Special Appeal Writ No. 1077/2005

1. Adarsh Shiksha Parishad Samiti, Saraswati Balika Senior Higher Secondary Vidya Mandir Campus, Sector 2 Jawahar Nagar, Jaipur Through its Secretary
2. Saraswati Balika Senior Higher Secondary Vidya Mandir, Sector 2 Jawahar Nagar, Jaipur through its Secretary, Adarsh Shksha Parisad Samiti, Jaipur

----Appellants

Versus

1. Gajanand Sharma S/o Shri Har Sahai Sharma, aged about 30 years, R/o A-2, Janta Colony, Jaipur
2. District Education Officer Secondary (First), Old Pagal Khana, Chandpole Gate, Jaipur
3. The Rajasthan Non-Government Educational Institutions Tribunal, Jaipur through its Presiding Officer

----Respondents

Connected With

D.B. Special Appeal Writ No. 826/2011

Gajanand Sharma aged about 42 years son of Shri Har Sahai Sharma, A-2, Janta Colony, Jaipur.

----Appellant

Versus

1. Saraswati Balika Senior Higher Secondary Vidya Mandir, Sector 2 Jawahar Nagar, Jaipur through its Manager
2. Adarsh Shiksha Parishad Samiti, Saraswati Balika Senior Higher Secondary Vidya Mandir Campus, Sector 2 Jawahar Nagar, Jaipur through its Manager
3. District Education Officer (Girls), 6Th Floor, Mini Secretariat, Jaipur
4. Rajasthan Non Government Educational Institutions Tribunal, Jaipur through its Presiding Member.

----Respondents

For Appellant(s)	:	Mr. Prahlad Singh in SAW No.1077/2005 (Respondent in SAW No.826/2011)
For Respondent(s)	:	Mr. Ankit Sethi in SAW No.1077/2005 (For appellant in SAW No.826/2011) Mr. Ganesh Meena, AAG

HON'BLE MR. JUSTICE PANKAJ BHANDARI
HON'BLE MR. JUSTICE ANOOP KUMAR DHAND

Judgment

Reserved on	::	April 13th, 2022
Pronounced on	::	May 6th, 2022

REPORTABLE

(Per: Anoop Kumar Dhand,J.)

This special appeal No.1077/2005 has been submitted against the impugned judgment dated 16.09.2005 passed by Single Judge by which the writ petition submitted by the appellant against the judgment dated 16.8.2003 passed by the Rajasthan Non-Government Educational Institutions Tribunal, Jaipur (for short 'the Tribunal') has been rejected and the judgment passed by the tribunal has been upheld.

Earlier, this special appeal was allowed vide judgment dated 08.08.2017 and the judgment of the Single Judge was quashed and set aside and the termination order of the respondent was held to be valid and it was observed that if the respondent is agreeable to the offer of receipt of compensation of Rs.2 lacs then the same may be granted to him as compensation.

Against the judgment dated 8.8.2017, the respondent submitted Civil Appeal No.5144-5146/2021 before the Hon'ble Supreme Court and the same was disposed of on 06.09.2021 with the following directions:-

"Feeling aggrieved and dissatisfied with the impugned judgment and order dated 08.08.2017 passed by the Division Bench of the High Court of Judicature at Rajasthan, Bench at Jaipur, in D.B. Special Appeal Writ No.1077/2005 and D.B. Special Appeal Writ No.826/2011 by which the Division Bench of the High Court has allowed the appeal(s) preferred by the Management by quashing and setting aside the order passed by the learned Single Judge, the original Writ Petitioner has preferred the present appeals.

Having heard the learned counsel for the respective parties and considering the pleadings, the main question before the Division Bench was whether before terminating the services of the appellant, the Director's approval was necessary or not. Though the aforesaid was dealt with by the learned Single Judge in detail, the Division Bench, while quashing and setting aside the order passed by the learned Single Judge, has not at all considered the aforesaid fact.

Under the circumstances, the impugned judgment and order passed by the Division Bench cannot be sustained and the same deserves to be quashed and set aside and the matter is to be remanded to the Division Bench for fresh decision.

In view of the above, the present Appeals are allowed. The impugned common judgment and order passed by the High Court in D.B. Special Appeal Writ No.1077/2005 and D.B. Special Appeal Writ No.826/2011 is hereby quashed and set aside. The matter is remitted to the Division Bench of the High

Court for fresh decision of the aforesaid Special Appeals. The D.B. Special Appeal Writ No.1077/2005 and D.B. Special Appeal Writ No.826/2011 are hereby ordered to be restored to the file of the High Court.

However, it is observed, we have not expressed anything on merits in favour of either of the parties and it is for the Division Bench to consider the same in accordance with law and on its own merits.

Considering the fact that the matter is very old, we request the Division Bench of the High Court to decide and dispose of the aforesaid Appeals at the earliest and, preferably, within a period of six months from the date of receipt of the present order."

The main issue involved in this appeal is "Whether before terminating the services of the employee, the Director's approval is necessary or not ?"

The facts of the case are that respondent Gajanand Sharma (hereinafter referred as 'the respondent') was appointed on the post of Lower Division Clerk (for short 'L.D.C.') by the appellant Managing Committee of Adarsh Siksha Parishad Saimiti vide order dated 23.06.1992. The allegation of the appellant that the respondent was indulged in grave misconduct and misappropriation of funds and he was also indulged in beating and abusing the Headmaster of the school.

Embezzlement was found in his cash-book when he was working as Cashier. The order sent by the Headmaster was torn by him. Hence, the respondent was placed under suspension vide order dated 02.12.1995. The respondent challenged his suspension order dated 2.12.1995 before the Tribunal but his appeal was dismissed on 20.11.1996.

In pursuance of Rule 38(5)(d) of the Rajasthan Non-Government Educational Institutions Rules, 1993 (for short 'the Rules of 1993') the respondent was required to submit a certificate/undertaking to the effect that he was not engaged in other employment, business, profession during his suspension period. But the respondent did not submit any such undertaking.

Thereafter, disciplinary proceedings were initiated against the respondent by an Enquiry Committee of three Members after providing opportunity of hearing to him. During this enquiry, all the charges were proved against the respondent. After considering the entire material, the services of the respondent were terminated vide order dated 06.08.1998 in consonance with the provisions of Section 18 of the Rajasthan Non-Government Educational Institutions Act, 1989 (for short 'the Act of 1989') and Rule 39 of the Rules of 1993.

Feeling aggrieved by the termination order dated 06.08.1998, the respondent submitted an appeal before the tribunal, who allowed the same vide judgment dated 16.08.2003 and quashed the termination order by holding that prior approval of the Director of Education was not taken by the appellant before terminating the services of the respondent. Hence, the termination order of the respondent has been passed in violation of the provisions contained under section 18 of the Act of 1989 and Rule 39(2) of the Rules of 1993 and directed the appellant to reinstate the respondent with all consequential benefits.

Against the judgment dated 16.08.2003 passed by the Tribunal, the appellant submitted S.B. Civil Writ Petition No. 572/2004 before the Single Bench but the same was dismissed by

the learned Single Judge vide impugned judgment dated 16.09.2005 by observing thus:-

"The petitioners seek to quash the judgment dated August 16, 2003 of Rajasthan Non-Government Educational Institutions Tribunal, Jaipur (for short 'Tribunal'), whereby the application of respondent No.1 (for short 'employee') under section 19 of Rajasthan Non Government Educational Institutions Act, 1989 (for short '1989 Act') was allowed, the order of termination dated August 6, 1998 was set aside and the respondent employee was reinstated in the service with all consequential benefits.

Learned counsel appearing on behalf of the petitioners vehemently criticised the impugned judgment from various angles and urged that since the institution is not getting any grant in aid the provisions of 1989 Act are not applicable to it. According to the Institution the service of the employee was rightly terminated as he was indulged in grave and uncalled for misconduct and created abnormal situation in the institution.

Section 18 of 1989 Act shall be applicable to all the recognized institutions. It is not necessary that the institution should be aided one 'Aided Institution' as defined in section 2(b) of 1989 Act means "a recognised institution which is receiving aid in the form of maintenance grant from the State Government." Whereas "recognised institution" as per section 2(g) of 1989 Act means "a non-Government educational institution affiliated to any University or recognised by the Board, Director of Education or any officer authorised by the State Government or the Director of Education in this behalf."

As per ratio indicated in TMA Pai Vs. State of Karnataka (2002) 8 SCC 481, it was not necessary for

the institution to obtain the consent of Director of Education. But in my opinion other mandates of proviso (iii) of Section 18 of 1989 Act ought to have been followed in the letter and spirit. There ought to have been unanimous opinion of the Managing Committee of the Institution that the services of the employee could not have been continued without prejudice to the interest of the institution and the services could only have been terminated after giving the employee six months notice or salary in lieu thereof.

Since the proviso (iii) of section 18 of 1989 Act has not been followed in letter and spirit by the Institution in terminating the services of the employee I do not find any illegality in the order of the Tribunal. In my considered opinion learned Tribunal has proceeded within its parameters and supervisory jurisdiction under Article 227 of the Constitution is not required to be invoked. In Sadhana Lodh Vs. National Insurance Co. Ltd. (2003)3 SCC 524, Three Judge Bench of Hon'ble Supreme Court in para 7 indicated thus:-

> *"The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is confined only to see whether an inferior court or Tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record, much less of an error of law. In exercising the supervisory power under Article 227 of the Constitution, the High Court does not act as an Appellate Court or the Tribunal. It is also not permissible to a High Court on a petition filed under Article 227 of the Constitution to review or re-weigh the evidence upon which the inferior court or Tribunal purports to have*

passed the order or to correct errors of law in the decision."

For these reasons the writ petitions fail and stand dismissed without any order as to costs."

Relying on the judgment of Hon'ble Supreme Court in the case of ***T.M.A. Pai Foundation Vs. State of Karnataka, reported in 2002 (8) SCC 481,*** the learned Single Judge held that it was not necessary for the appellant institution to obtain the consent of the Director of Education. But the learned Single Judge held that the other mandates of proviso (iii) of section 18 of the Act of 1989 were not followed. The Single Judge was of the view that the services of the respondent could not be terminated without giving six months notice or salary in lieu thereof and there ought to have been unanimous opinion of the Managing Committee.

Against the judgment dated 16.09.2005 passed by the Single Bench, this special appeal has been submitted by the appellant inter-alia on the following grouds that the services of the respondent were terminated as a result of misconduct proved in a domestic enquiry conducted by the appellant. The counsel for the appellant submitted that the Single Judge has erred in dismissing the writ petition by relying upon the proviso (iii) of Section 18 of the Act of 1989, which is not applicable because services of the respondent were terminated after holding an enquiry and the misconduct of the respondent was proved and the proviso (iii) of section 18 of the Act of 1989 is an exception and the same does not relate to the case of misconduct.

Learned counsel submitted that the appellant is a private unaided educational institution and is not receiving any grant-in-aid from the State Government. Therefore, the provisions of the Act of 1989 and the Rules of 1993 are not applicable to the appellant but this aspect has not been considered by the tribunal and the Single Bench while passing the impugned judgments. He further submitted that the proviso (iii) of section 18 of the Act of 1989 is not applicable because after holding an enquiry and after giving proper opportunity of hearing to the respondent, the Managing Committee has terminated the services of the respondent.

Counsel further submitted that this was not the case of the respondent before the Tribunal and the Single Bench that there was violation of proviso (iii) of section 18 of the Act of 1989, therefore, the observations made by the Single Bench regarding violation of proviso (iii) of section 18 of the Act of 1989 are not tenable in the eye of law and the same is foreign to the record.

The counsel argued that approval of the Director (Education) is not mandatory as per the judgment of TMA Pai Foundation (supra) and the same was accepted by the learned Single Judge and the writ petition ought to have been allowed but the learned Single Judge has dismissed the writ petition.

In support of his contentions, the learned counsel for the appellant has placed reliance on the following judgments:-

1. Educational Society of Sophia High School & Ors. Vs. Raj. Non-Govt. Educational Ins. Tri. & Ors., reported in 2003 WLC (UC) 638;

2. Central Academy Society Vs. Rajasthan Non-Govt. Educational Institutions Tribunal (Larger Bench Judgment), reported in (2010) 3 WLC 21; and

3. Kailash Singh Vs. Managing Committee Mayo College, Ajmer & Others, reported in (2018) 18 SCC 216.

Lastly, the counsel submitted that the appellant Institution is ready to pay reasonable amount of compensation of Rs.2 lacs to the respondent.

Per-contra, the counsel for the respondent submitted that no illegality has been committed by the learned Single Judge while dismissing the writ petition submitted by the appellant. He further submitted that there is total violation of the provision contained under section 18 of the Act of 1989 and Rule 39(2) of the Rules of 1993.

Counsel further submits that before terminating the services of the respondent it was necessary for the appellant to have obtained the prior permission of the Director of Education under section 18 of the Act of 1989 and under Rule 39 of the Rules of 1993. He further submits that it was necessary to follow the procedure contained under proviso (iii) of section 18 of the Act of 1989 to give six months notice or salary in lieu thereof and the consent of the Director in writing.

In support of his contentions, the learned counsel for the respondent has placed reliance upon following Judgments of the Hon'ble Apex Court:-

1. Raj Kumar v. Director of Education & Ors., reported in (2016) 6 SCC 541; and

2. Marwari Balika Vidyalaya Vs. Asha Srivastava and Others, reported in (2020) 14 SCC 449.

We have heard the counsel for the parties and perused the documents available on the record.

The respondent was serving as L.D.C. with the appellant institution. His services as L.D.C. were terminated vide

order dated 06.08.1998 as a result of proved misconduct in a departmental enquiry conducted by the appellant.

The aforesaid termination order was challenged by the respondent before the tribunal inter-alia on the ground that sufficient opportunity of defence was not provided to him during domestic enquiry against him. The copies of the record was not provided to him. But their objections were turned down by the tribunal by observing in the impugned judgment dated 06.08.1998 that sufficient opportunity was granted to the respondent for producing his defence and all requisite documents and enquiry report were provided to him. After getting all the aforesaid, the respondent submitted a representation to the Authority and after considering the same, the order of termination of his services was passed.

The Tribunal quashed the termination order of the respondent only on a technical ground that no approval of the Director of Education was taken under section 18 of the Act of 1989 and under Rule 39(2) of the Rules of 1993 before passing the termination order and the appeal filed by the respondent was allowed by the tribunal vide judgment dated 16.08.2003 by directing the appellant to reinstate the respondent back in service with all consequential benefits.

The appellant assailed the impugned judgment dated 16.08.2003 before the Single Bench and relying upon the ratio indicated in the case of TMA Pai Foundation (supra), the Single Judge held that it was not necessary for the appellant-Institution to obtain the consent of the Director of Education. But the learned Single Judge gone a step ahead and held that the other mandates of proviso (iii) of Section 18 of the Act of 1989 ought to have been

followed in letter and spirit. There ought to have been unanimous opinion of the Managing Committee of the Institution that the services of the employee could not have been continued without prejudice to the interest of the institution and the services could only have been terminated after giving the employee six months notice or salary in lieu thereof, and the writ petition of the appellant institution was dismissed.

It appears that the respondent was satisfied by the judgment dated 16.09.2005 passed by the Single Bench that is why no special appeal was submitted by him against the finding recorded by the Single Judge that it was not necessary for the institution to obtain the consent of the Director of Education before passing the order of termination of the respondent.

It was only the appellant Institution who was aggrieved by the second part of the impugned judgment dated 16.09.2005 passed by the Single Bench that there was non-compliance of the mandate of the proviso (iii) of section 18 of the Act of 1989. And this special appeal was submitted to that extent only.

Now the question is "Whether the proviso (iii) of Section 18 of the Act of 1989 is not applicable in the case of the respondent ?"

Before proceeding further to clear with the issue, Section 18 of the Act of 1989 is reproduced as under:-

> "***18. Removal, dismissal or reduction in rank of employees.***- *Subject to any rules that may be made in this behalf, no employee of a recognised institution shall removed, dismissed or reduced in rank unless he has been given by the management a reasonable opportunity of being heard against the action proposed to be taken :*

Provided that no final order in this regard shall be passed unless prior approval of the Director of Education or an officer authorised by him in this behalf has been obtained :

Provided further that this section shall not apply -

(i) to a person who is dismissed or removed on the ground of conduct which led to his conviction on a criminal charge; or

(ii) where it is not practicable or expedient to give that employee an opportunity of showing cause, the consent of Director of Education has been obtained in writing before the action is taken; or

(iii) where the managing committee is of unanimous opinion that the services of an employee can not be continued services of such employee are terminated after giving him six months notice or salary in lieu thereof and the consent of the Director of Education is obtained in writing."

Rule 39 of the Rules of 1993 deals with the procedure of removal or dismissal from service and the same is quoted as under:-

*"**39. Removal or Dismissal from Service.**- (1) The services of an employee appointed temporarily for six months, may be terminated by the management at any time after giving at least one month's notice or one month's salary in lieu thereof. Temporary employee, who wishes to resign shall also give atleast one month's notice in advance or in lieu thereof deposit or surrender one month's salary to the management.*

(2) An employee, other than the employee referred to in sub-rule (1), may be removed or dismissed

from service on the grounds of insubordination, inefficiency, neglect of duty, misconduct or any other grounds which makes the employee unsuitable for further retention in service. But the following procedure shall be adopted for the removal or dismissal of an employee :

(a) A preliminary enquiry shall be held on the allegations coming into or brought to the notice of the management against the employee;

(b) On the basis of the findings of the preliminary enquiry report, a charge sheet alongwith statement of allegations shall be issued to the employee and he shall be asked to submit his reply within a reasonable time;

(c) After having pursued the preliminary enquiry report and the reply submitted by the employee, if any, if the managing committee is of the opinion that a detailed enquiry is required to be conducted, a three member committee shall be constituted by it in which a nominee of the Director of Education shall also be included;

(d) During the enquiry by such enquiry committee the employee shall be given a reasonable opportunity of being heard and to defend himself by means of written statement as well as by leading evidence, if any;

(e) The enquiry committee, after completion of the detailed enquiry, shall submit its report to the management committee;

(f) If the managing committee, having regard to the findings of the enquiry committee on the charges, is of the opinion that the employee should be removed or dismissed from service, it shall -

(i) furnish to the employee a copy of the report of the enquiry committee,

(ii) give him a notice stating the penalty of removal or dismissal and call upon him to submit within a specified time such representation as he may wish to make on the proposed penalty;

(g) In every case, the records of the enquiry together with a copy of notice given under sub-clause (f) (ii) above and the representation made in response to such notice if any, shall be forwarded by the managing committee to the Director of Education or an officer by authorised him in this behalf, for approval;

(h) On receipt of the approval as mentioned in sub-clause (g) above, the managing committee may issue appropriate order of removal or dismissal as the case may be and forward a copy of such order to the employee concerned and also to the Director of Education or the officer authorised by him in this behalf :

Provided that the provisions of this rule shall not apply -

(i) to an employee who is removed or dismissed on the ground of conduct which led to his conviction on a criminal charge, or

(ii) where it is not practicable or expedient to give that employee an opportunity of showing cause, the consent of the Director of Education has been obtained in writing before the action is taken, or

(iii) where the managing committee is of unanimous opinion that, the services of an employee can not be continued without prejudice to the interest of the institution, the services of such employee are

terminated after giving him six months notice or salary in lieu thereof and the consent of the Director of Education is obtained in writing."

After following the mandate of Section 18 of the Act of 1989, after giving the reasonable opportunity of hearing to the respondent, the order of termination from service was passed. The proviso (iiii) of Section 18 of the Act of 1989 was not applicable in this case.

The proviso is applicable only when the enquiry under section 18 is not conducted. But here in this case the enquiry was held as per the provisions of the Act and on the basis of the Enquiry Report, the Managing Committee of the appellant-Institution passed the order of termination.

This was not the case of the respondent neither before the Tribunal nor before the Single Bench that there was any violation of proviso (iii) of Section 18. Therefore, the finding recorded by the Single Judge regarding violation of proviso (iii) of section 18 is liable to be quashed and set aside.

Instant case is not a case where the Managing Committee was of the unanimous opinion that the services of the respondent employee could not be continued without prejudice to the interest of the appellant-Institution, so there was no occasion to give six months notice or salary in lieu of the termination.

Instant case is a case of gross misconduct of the respondent for which a detail domestic enquiry was conducted by the Committee after giving reasonable opportunity of hearing to the respondent and when all the charges were proved, the decision was taken for termination of the services of the respondent.

The Tribunal has not relied on any of the contentions of the respondent with regard to termination order of the respondent on merits. All the objections taken by the respondent before the Tribunal were turned down and the same were not relied and no illegality was found in the termination order except that no consent or prior approval of the Director of Education was taken under section 18 of the Act of 1989.

The Tribunal allowed the appeal of the respondent solely on the premises that the appellant Institution has not obtained prior approval of the Director of Education and the termination order was held to be illegal and consequently, the termination order was set-aside and the respondent was directed to be reinstated in service with all consequential benefits. It appears that the respondent was satisfied with all the findings recorded by the Tribunal, that is why he did not challenge the adverse findings recorded against him. Hence, those findings have attained finality against the respondent.

The question of "taking prior approval of the Director before terminating the services of an employee or not ?" is /was no more res-integra. In T.M.A. Pai Foundation (supra), the Hon'ble Supreme Court has made it clear that in any recognized private educational institution which is not receiving any aid from the State, there has to be least interference by the State in the managerial functions of such institution. Making specific reference to the requirement of obtaining prior approval before terminating services of an employee of an educational institution, which is not receiving any aid from the State in context of disciplinary action taken by any such institution, it was held by the Hon'ble Supreme Court in para 63 and 64 as under:-

"63. It was submitted that for maintaining the excellence of education, it was important that the teaching faculty and the members of the staff of any educational institution performed their duties in the manner in which it is required to be done, according to the rules or instructions. There have been cases of misconduct having been committed by the teachers and other members of the staff. The grievance of the institution is that whenever disciplinary action is sought to be taken in relation to such misconduct, the rules that are normally framed by the government or the university are clearly loaded against the Management. It was submitted that in some cases, the rules require the prior permission of the governmental authorities before the initiation of the disciplinary proceeding, while in other cases, subsequent permission is required before the imposition of penalties in the case of proven misconduct. While emphasizing the need for an independent authority to adjudicate upon the grievance of the employee or the Management in the event of some punishment being imposed, it was submitted that there should be no role for the government or the university to play in relation to the imposition of any penalty on the employee.

64. An educational institution is established only for the purpose of imparting education to the students. In such an institution, it is necessary for all to maintain discipline and abide by the rules and regulations that have been lawfully framed. The teachers are like foster- parents who are required to look after, cultivate and guide the students in their pursuit of education. The teachers and the institution

exist for the students and not vice versa. Once this principle is kept in mind, it must follow that it becomes imperative for the teaching and other staff of an educational institution to perform their duties properly, and for the benefit of the students. Where allegations of misconduct are made, it is imperative that a disciplinary enquiry is conducted, and that a decision is taken. In the case of a private institution, the relationship between the Management and the employees is contractual in nature. A teacher, if the contract so provides, can be proceeded against, and appropriate disciplinary action can be taken if the misconduct of the teacher is proved. Considering the nature of the duties and keeping the principle of natural justice in mind for the purposes of establishing misconduct and taking action thereon, it is imperative that a fair domestic enquiry is conducted. It is only on the basis of the result of the disciplinary enquiry that the management will be entitled to take appropriate action. We see no reason why the Management of a private unaided educational institution should seek the consent or approval of any governmental authority before taking any such action. In the ordinary relationship of master and servant, governed by the terms of a contract of employment, anyone who is guilty of breach of the terms can be proceeded against and appropriately relief can be sought. Normally, the aggrieved party would approach a court of law and seek redress. In the case of educational institutions, however, we are of the opinion that requiring a teacher or a member of the staff to go to a civil court for the purpose of seeking redress is not in the interest of general education. Disputes between the

management and the staff of educational institutions must be decided speedily, and without the excessive incurring of costs. It would, therefore, be appropriate that an educational Tribunal be set up in each district in a State, to enable the aggrieved teacher to file an appeal, unless there already exists such an educational tribunal in a State -- the object being that the teacher should not suffer through the substantial costs that arise because of the location of the tribunal; if the tribunals are limited in number, they can hold circuit/camp sittings in different districts to achieve this objective. Till a specialized tribunal is set up, the right of filing the appeal would lie before the District Judge or Additional District Judge as notified by the government. It will not be necessary for the institution to get prior permission or ex post facto approval of a governmental authority while taking disciplinary action against a teacher or any other employee. The State Government shall determine, in consultation with the High Court, the judicial forum in which an aggrieved teacher can file an appeal against the decision of the management concerning disciplinary action or termination of service."

There were conflicting view of this Court on this issue of seeking prior approval of Director of Education or not in the following cases:-

(i) Educational Society of Sophia High School & Ors. Vs. Raj. Non-Govt. Educational Ins. Tri. & Ors., reported in 2003 WLC (Raj.) UC 638;

(ii) Managing Committee through Chairman (Brid) Dy.G.O.C., Army School, Vs. Smt. Pushpa Sharma, reported in 2006(3) WLC (Raj.) 504; and

(iii) Saint Meera Brotherhood Society Vs. State of Rajasthan, reported in 2006(1) WLC (Raj.) 677.

And looking to the conflicting view, the following questions were framed:-

"Whether requirement of section 18 is attracted even in the case of unaided recognized education institutions ?" And this question was referred to the Larger Bench and the same was decided in the case of ***Central Academy Society Vs. Rajasthan Non-Govt. Educational Institutional Tribunal, reported in 2010(3) WLC 21*** in para 43,44 and 45 as under:-

"43. Thus, we find that even while the first proviso to Section 18 of the Act of 1989 would not apply in the disciplinary action by the unaided private educational institution, the other provisions of Section 18 are, without any doubt, applicable to all the institutions, aided or unaided.

44. Before concluding, we may point out that a decision by the learned Single Judge of this Court in the case of Managing Comimittee S.S. Jain Subodh Siksha Samiti, Jaipur & Anr. Vs. Rajendra Kumar Rao : 2005 (5) RLW 288 has been referred during the course of arguments. In this case, the learned Single Judge observed that the decision in Pai Foundation overrules clause (iii) of the second proviso to a limited extent that it would not be necessary for the unaided institution to obtain the consent of Director of Education but other mandates of this clause (iii) ought to be followed in letter and spirit. With respect, we are unable to endorse the first part of the views so stated in this decision. In our considered opinion, as stated supra, nothing contained in second proviso to Section 18 is hit by

Pai Foundation. What is eclipsed by the ratio of Pai Foundation in relation to an unaided institution is only the first proviso to Section 18; and not the other provisions contained in Section 18 viz., the principal provision, and so also the second proviso. These other provisions of Section 18 do apply, as they are and in mandatory form, to unaided institution as well.

45. In view of what has been discussed above, our answer to this reference is that the first proviso to Section 18 of the Act of 1989 does not apply in relation to the disciplinary action by private unaided recognised institution but the other provisions of Section 18 including the second proviso do apply to such unaided private recognised educational institution too.

Hence, in view of the Constitutional Bench of 11 Judges of Hon'ble Supreme Court in the case of T.M.A. Pai Foundation (supra) and Larger Bench of three Judges of this Court in the cse of Central Academy Society (supra), it is clear that the first proviso to section 18 of the Act of 1989 would not apply in the disciplinary action taken by the Unaided Private Educational Institutions and prior consent/ approval of the Director, Education is not required before passing the order of removal/dismissal.

The two Judges judgment of the Hon'ble Apex Court relied by the counsel for the respondent in the case of Raj Kumar (supra) is not applicable under the facts of this case. Because in the case of Raj Kumar (supra), the judgment of 11 Judges Constitutional Bench in the case of T.M.A. Pai Foundation (supra) was not brought into the notice of the Hon'ble Supreme Court.

In the case of ***Central Board of Dawoodi Bohara Community and Another Vs. State of Maharashtra & Anr., reported in (2005) 2 SCC 673,*** the Hon'ble Apex Court has held in para 12 as under:-

"12. Having carefully considered the submissions made by the learned senior counsel for the parties and having examined the law laid down by the Constitution Benches in the abovesaid decisions, we would like to sum up the legal position in the following terms :-

(1) The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or co-equal strength.

(2) A Bench of lesser quorum cannot doubt the correctness of the view of the law taken by a Bench of larger quorum. In case of doubt all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration. It will be open only for a Bench of co- equal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of co- equal strength, whereupon the matter may be placed for hearing before a Bench consisting of a quorum larger than the one which pronounced the decision laying down the law the correctness of which is doubted.

(3) The above rules are subject to two exceptions : (i) The abovesaid rules do not bind the discretion of the Chief Justice in whom vests the power of

framing the roster and who can direct any particular matter to be placed for hearing before any particular Bench of any strength; and

(ii) In spite of the rules laid down hereinabove, if the matter has already come up for hearing before a Bench of larger quorum and that Bench itself feels that the view of the law taken by a Bench of lesser quorum, which view is in doubt, needs correction or reconsideration then by way of exception (and not as a rule) and for reasons it may proceed to hear the case and examine the correctness of the previous decision in question dispensing with the need of a specific reference or the order of Chief Justice constituting the Bench and such listing. Such was the situation in Raghubir Singh & Ors. and Hansoli Devi."

In the case of ***Sundeep Kumar Bafana Vs. State of Maharashtra & Anr., reported in (2014) 16 SCC 623,*** the Hon'ble Apex Court has held in para 19 as under:-

"19. It cannot be over-emphasised that the discipline demanded by a precedent or the disqualification or diminution of a decision on the application of the per incuriam rule is of great importance, since without it, certainty of law, consistency of rulings and comity of Courts would become a costly casualty. A decision or judgment can be per incuriam any provision in a statute, rule or regulation, which was not brought to the notice of the Court. A decision or judgment can also be per incuriam if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a Co-equal or Larger Bench; or if the

decision of a High Court is not in consonance with the views of this Court. It must immediately be clarified that the per incuriam rule is strictly and correctly applicable to the ratio decidendi and not to obiter dicta. It is often encountered in High Courts that two or more mutually irreconcilable decisions of the Supreme Court are cited at the Bar. We think that the inviolable recourse is to apply the earliest view as the succeeding ones would fall in the category of per incuriam."

The Hon'ble Supreme Court in the case of ***State of Bihar and Others Vs. Bihar Secondary Teachers Struggle Committee, Munger & Ors., reported in (2019) 18 SCC 301*** has held in para 116, 117, 118, 119 as under:-

"116. As rightly held by brother Lalit J., the issue involved in these appeals is answered by two decisions of the Constitution Bench of this Court, namely, State of Punjab vs. Joginder Singh and Zabar Singh Vs State of Haryana.

117. In my view also, the issue, which is subject-matter of these appeals, has to be decided keeping in view the law laid down by this Court in the aforementioned two decisions of the Constitution Bench.

118. I may, at this stage, refer to a decision in N.Meera Rani vs. State of T.N. In this case, it was argued that the question involved in the appeal is governed by the decision of the Constitution Bench in Rameshwar Shaw vs. District Magistrate, Burdwan. It is pertinent to mention that the same question

was also decided by this Court but it was decided subsequent to the decision of the Constitution Bench in many other cases. The later decisions on the same question were, however, rendered by the Benches comprised of lesser number of the Judges.

119. J.S. Verma, J. (as His lordship then was), speaking for Three Judge Bench, held that the question involved in the appeal before them has to be, therefore, decided in the light of law laid down by the Constitution Bench because firstly, it is a decision rendered by the Constitution Bench; Secondly, it is prior in point of time; and thirdly, the law laid down in later decisions has to be read in the light of the law laid down by the Constitution Bench. This is what His Lordship said in para 13 (Meera Rani case SCC p.429):

> *"13. We may now refer to the decisions on the basis of which this point is to be decided. The starting point is the decision of a Constitution Bench in Rameshwar Shaw v. Distric Magistrate, Burdwan. All subsequent decisions which are cited have to be read in the light of this Constitution Bench decision since they are decisions by Benches comprising of lesser number of Judges. It is obvious that none of these subsequent decisions could have intended taking a view contrary to that of the Constitution Bench in Rameshwar Shaw case."*

The Hon'ble Apex Court in the case of ***Official Liquidator Vs. Dayanand, reported in 2008 (10) SCC 1*** has held in para 90 as under:-

> *"90. We are distressed to note that despite several pronouncements on the subject, there is*

substantial increase in the number of cases involving violation of the basics of judicial discipline. The learned Single Judges and Benches of the High Courts refuse to follow and accept the verdict and law laid down by coordinate and even larger Benches by citing minor difference in the facts as the ground for doing so. Therefore, it has become necessary to reiterate that disrespect to constitutional ethos and breach of discipline have grave impact on the credibility of judicial institution and encourages chance litigation. It must be remembered that predictability and certainty is an important hallmark of judicial jurisprudence developed in this country in last six decades and increase in the frequency of conflicting judgments of the superior judiciary will do incalculable harm to the system inasmuch as the courts at the grass root will not be able to decide as to which of the judgment lay down the correct law and which one should be followed.

Hence, in view of the judgment of the Hon'ble Apex Court, we see no reason to take a different view as the controversy involved in this appeal has already been put to rest by the Constitutional Bench of 11 Judges of the Hon'ble Court in the case of T.M.A. Pai Foundation (supra) and the three Judges Larger Bench of this Court in the case of Central Academy Society (supra), that prior approval of the Director of Education is not necessary before taking disciplinary action against the employee of the Unaided Recognized Educational Institution.

The provisions contained under proviso (iii) of section 18 of the Act of 1989 are not attracted in this case. Hence, the

findings recorded by the learned Single Judge on this point is not sustainable.

In view of the above discussion, the impugned judgment dated 16.09.2005 passed by the Single Judge as well as the impugned judgment dated 16.08.2003 passed by the Tribunal is quashed and set aside and the impugned termination order dated 06.08.1998 is upheld.

The appeal is allowed.

The Stay application and all pending application(s), if any, stand disposed of.

No order as to costs.

However, it would be open for the respondent to accept the compensation amount of Rs.2 lacs offered by the appellant, if it is agreeable to him.

D.B. Special Appeal (Writ) No.826/2011:

This appeal has been submitted by the employee/ appellant against the punishment order dated 06.01.2011 passed by the learned Single Bench by which the claim of the employee for equal pay for equal work has been denied. Since his termination order dated 06.08.1998 has been upheld, hence, there is no force in this appeal and the same is hereby dismissed.

All pending applications stand dismissed.

(ANOOP KUMAR DHAND),J (PANKAJ BHANDARI),J

Sharma NK/61-62