



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Civil Writ Petition No. 726/2001

Abdul Rahim son of Shri Deen Mohammad, aged about 30 yers,
resident of C/o M/s Azhruddin Brothers and General Store, Near
Islamia Senior Secondary School, Sikar, Rajasthan.
-----Petitioner

Versus

- 1.The Managing Committee Islamia Senior Secondary School,
Sikar through its Manager.
2.The Director, Secondary Education, Rajasthan, Bikaner.
3.The Rajasthan Non-Government Educational Institutions
Tribunal, Jaipur.
-----Respondents

For Petitioner(s) : Mr. Prahlad Singh
For Respondent(s) : Mr. Madhukar Tiwari, Adv.
Ms. Anjum Parveen Salawat for
Ms. Namita Parihar, Dy.G.C.

HON'BLE MR. JUSTICE ANAND SHARMA
JUDGEMENT

RESERVED ON :: **22/04/2025**
PRONOUNCED ON :: **02/05/2025**

1. Feeling aggrieved by order dated 14.07.2000 passed by
learned Rajasthan Non-Government Educational Institutions
Tribunal, Jaipur (for short, 'the Tribunal') in application No.
111/1999 as well as dissatisfied with the action of termination of
service w.e.f. 15.05.1999, the petitioner has filed the instant writ
petition with a further prayer to grant benefit of reinstatement
along with all consequential benefits.

2. Facts in brief are that the petitioner was appointed in
Respondent-non-Government Educational Institution on
16.09.1993. As per petitioner, respondent No.1 is a recognized



and aided Institution, receiving grant in aid from the Government of Rajasthan for its recurring and non-recurring expenses.

3. As per the petitioner, he worked as Teacher in Primary Classes from 16.09.1993 to 31.01.1994 and for teaching the Senior Secondary Classes from 01.02.1994 to 14.05.1994. Thereafter, artificial break was given to him and an advertisement was issued in news-paper for inviting applications from eligible persons for appointment on the post of Teacher Grade-III. As per petitioner, he submitted application pursuant to the advertisement and also appeared before the Interview Board constituted by the Institution. After undergoing process, he was appointed on the post of Teacher Grade-III on 27.07.1996. However again his services were dispensed with at the end of academic session 1996-97 w.e.f. 22.05.1997 and again in July, 1997, he was given re-appointment and at the end of session 1997-98, his services were again discontinued. As per petitioner, he was again appointed in the start of next academic session in July, 1998 and when he sought admissible leaves in May, 1999, the same were not granted and annoyed by a such demand of leave his services were discontinued w.e.f. 15.05.1999.

4. Feeling aggrieved by the termination, petitioner filed an application under Section 21 of the Rajasthan Non-Government Educational Institutions Act, 1989 with a prayer to quash and set aside the illegal action of the respondent in terminating the services of the petitioner w.e.f. 15.05.1999 with directions of reinstatement along with continuity in service as well as other



consequential benefits. He also prayed for granting pay fixation in revised pay scale of 1998 as well as to give benefit of PF and GPF and other service conditions admissible to an employee of Non-Government Institutions pursuant to the Act of 1989 and Rules of 1993 framed thereunder. He also made some other incidental prayers.

5. Reply to the application, filed by the petitioner before the Tribunal, was filed by the respondent-Institution on 06.08.1999 in which, the stand of respondent was that services of the petitioner have not been terminated rather he himself has left the services without any intimation and without taking any leave. It was also submitted that petitioner was never appointed against any sanctioned and aided post. It has also been stated in reply to the application by the respondent that since services of the petitioner were never terminated, therefore, the application was liable to be dismissed.

6. Thereafter, without there being any direction of the Tribunal, at its own, the respondent-Institution filed an affidavit dated 26.10.1999, which was in support of reply to the application earlier filed by the respondent-institution and without there being any reference in the pleadings, as many as four documents were placed on record including one order dated 14.05.1999 showing that services of the petitioner were terminated w.e.f. 15.05.1999.

7. Learned Tribunal decided the application vide order dated 14.07.2000, whereby the relief against termination of service



w.e.f. 15.05.1999 was disallowed to the petitioner, however, by partially allowing the application benefit and deduction for the purpose of PF under Rule 68 of the Rules of 1993 was granted to the petitioner.

8. Feeling aggrieved to the extent of rejecting the application qua the termination of services, the writ petition has been filed by the petitioner.

9. I have considered the record and have also heard learned counsel for both the parties at length.

10. It has been submitted by Shri Prahlad Sharma, learned counsel for the petitioner, that stand of the respondent before the Tribunal was self-contradictory, which naturally puts on doubt over the conduct and bonafide of the respondent. Apparently, the respondent-institution has attempted to mislead the Tribunal, firstly by stating in reply to the application dated 06.08.1999 that services of the petitioner were never terminated and rather the petitioner was allegedly absented from duties in an unauthorised manner, on the contrary, the respondent-institution itself placed copy of the order dated 14.05.1999 on record along with affidavit dated 26.10.1999 to show that services of the petitioner were terminated by the respondent-institution vide order dated 14.05.1999.

11. Learned counsel for the petitioner has vehemently argued that in fact the petitioner was in continuous service of the respondent-institution w.e.f 16.09.1993, albeit some artificial



breaks were given at the end of academic sessions, so as to defeat and prejudice the legitimate rights of the petitioner as well as to deprive him of salary for the summer vacations.

12. Learned counsel further submits that the respondent-institution being a recognized and aided institution was under an obligation to make compliance of Section 18 of the Act of 1989 as well as Rule 39 of the Rules of 1993, before passing any order of termination.

13. Learned counsel for the petitioner has submitted that neither any notice before terminating the services of the petitioner was given to him, nor was any enquiry whatsoever conducted against him by the respondent-institution. It has also been submitted that before terminating the services of the petitioner, the respondent-institution has also not taken approval of the Director of Education or any Officer authorized by him. Hence, the termination order was manifestly illegal and is liable to be quashed and set aside.

14. Per contra; learned counsel for the respondent, although, admitted that at the relevant time, the respondent-institution was recognized as well as aided institution, yet has submitted that the petitioner was never appointed against any sanctioned or aided post, therefore, protection under Section 18 of the Act of 1989 and Rules of 1993 was not available to the petitioner. It has also been submitted that under the circumstances where the petitioner was not holding any aided post, the respondents were not required to give any show cause notice or even conducting enquiry



against the petitioner nor were they required to seek approval from Director of Education. The respondents have supported the order passed by the learned Tribunal and have prayed for rejecting the writ petition.

15. Before adjudicating the rival claims, it would be relevant to refer the provisions of Section 18 of the Act of 1989 and Rule 39 of the Rules of 1993 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. 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.”

16. Counsel for the petitioner has placed reliance the following judgments:-

1. Honorary Secretary, Maheshwari Balika Vidyalaya, Jaipur Vs. Ravindra Pareek and Anr. reported in **WLC (Raj.) 1996(3) 102**

2. Sri Sanatan Dharm Shastri Sanskrit Mahavidyalaya Vs. The State of Raj. And Ors.: DBSAW No. 522/2013, decided on 19.09.2013.

3. Bhopalwala Arya Higher Secondary School Managing Committee, Sriganganar Vs. Mr. Nand Lal Saraswat and ors.:DBSAW No.860/2008, decided 28.11.2008, at Principal Seat, Jodhpur.

4. Managing Committee through Chairman (BRID) Dy. G.O.C., Army School and Anr. Vs. Smt. Pushpa Sharma & 4 Ors.:DB Civil Appeal (W)No.62/02, 202 to 205/2002, decided on 31.03.2006.

5. Central Academy Society Vs. Rajasthan Non-Government Educational Institutions Tribunal, Jaipur and ors.:DBSAW No. 344-346/2001, decided on 31.05.2010.

6. Raj Kumar Vs. Director of Education and Ors. reported in (2016) 6 SCC 541

7. Gajanand Sharma Vs. Adarsh Siksha Parishad Samiti, reported in AIR 2023 SC 539.



8. **Yogendra Kumar Mishra Vs. Rajasthan Non-Government Educational Institution Tribunal and Ors.** :SBCWP No. 2453/2001, decided on 01.05.2024

9. **Managing Committee D.A.V. Uchh Madhyamik Vidyalaya Vs. Saurabh Upadhayaya and anr. along with connected matters:** SBCWP No.3668/2017, decided on 08.04.2025

10. **Marwari Balika Vidyalaya V. Asha Srivastava and Ors.** reported in (2020) 14, SCC 449

11. **Anamika Saxena Vs. The Chairman Army Public School and Anr.** :SBCWP No. 1254/2017, decided on 10.04.2019

12. **The Chairman Army Public School and Anr. Vs. Anamika Saxena:**DBSAW No.772/2019, decided on 29.05.2019

13. **Army Public School and Anr. Vs. Arvind Bhandari:**SBCWP No. 17565/2022, decided on 14.02.2025

14. **Rattanlal and ors. Etc.etc. Vs. State of Haryana and Ors.** reported in AIR 1987 SC 478

15. **Mrs. Anita Kothari etc. etc. Vs. State of Raj. And ors.:**DBCWP No. 1908/1989 and 93 other connected writ petitions, decided on 20.08.1990.

17. On the contrary, learned counsel for the respondents has placed reliance on the following judgments:-

1. **Vishnu Kumar Vs. M.C.S. University and Anr.** reported in 2001 WLC 793.

2. **Managing Committee (The) & Ors. Vs. Ramphool Meena (DB)** reported in 2009(4) RLW 2997

3. **Jain Siksha Samiti Tijara Vs. Shri Ratan Singh** reported in WLC 2010 (U.C.) 754

4. **S.S. Jain Subodh Siksha Samiti Vs. Seema Daya (DB)** reported in 2017(1) WLC Raj. (U.C.) 209

5. **State of Rajasthan Vs. Smt. Sheela (DB)** reported in 2018 (2) WLN 251

6. **Rajasthan State Roadways Vs. Pranjeet Singh** reported in 2019 (6) SCC 250.

7. **Khetri Vikas Samiti Vs. Director College Education (SC)** decided on 09.05.2019



8. **Managing Committee Bhawani Niketan Vs. RNET** decided on 01.04.2022.

9. **Shri Agarwal Siksha Samiti Vs. State of Rajasthan** decided by Division Bench of this Hon'ble Court on 04.03.1998.

18. Counsel for the respondents has although admitted the fact that respondent-institution was aided institution yet has vehemently argued that as the petitioner was not holding any aided post, therefore, he does not any protection under Section 18 and Rule 39 of the Rules of 1993.

19. In this regard, it would be relevant to refer Rule 2(C) of the Rules of 1993.

2.(C)"Aided Institution" means a recognised institutions, which is receiving regular aid in the form of maintenance grant from the State Government;

Explanation-If any part of an institution, receives maintenance grant, the entire institution shall be treated as aided institution irrespective of whether any other part of the institution is or is not covered by the aid."

20. Explanation appended to the aforesaid Rule 2(C) would make it clear that even if any part of an institution is receiving a maintenance grant, then the institution shall be treated as an aided institution irrespective of the fact that whether any other part of the institution is or is not covered by the aid or not?

21. Thus, in view of the above, provision contemplated in explanation appended to Rule 2(C) of the Rules of 1993, even if grant in aid was not being received against the post held by the petitioner, yet by virtue of aforesaid provisions, protection granted to employees of aided institution was also to be applicable in the



case of the petitioner and he could not have been deprived of such protection for the reason that some part of the respondent-institution was admittedly an aided institution at the relevant time.

22. Learned Tribunal in its order dated 14.07.2000 has although taken note of the submission made on behalf of the counsel for the petitioner that provisions of Section 18 of the Act of 1989 and Rules 39 of the Rules of 1993 were not followed before terminating the services of the petitioner, yet such argument raised on behalf of the petitioner has not been discussed and analyzed by learned Tribunal at the touch stone of facts of the instant case. Learned Tribunal has denied protection of the Act of 1989 and Rules of 1993 to the petitioner only on account of the fact that petitioner was not appointed against the sanctioned post. Such finding is against the scheme of the Act and is not liable to be sustained.

23. In the case of **Honorary Secretary, Maheshwari Balika Vidyalaya, Jaipur (supra)**, this Court has held that provisions of Section 18 of the Act and Rule 39 of the Rules shall be applicable even in the cases where appointment was ad-hoc in nature and services of the concerned employee were used to be terminated after end of the academic session.

24. In the instant case, the respondents have utterly failed to show that any notice, much less than departmental enquiry, was issued to the petitioner prior to terminating his services, nor has the respondent discharged their burden to show as to whether



approval of Director of Education or any person authorised by him was ever taken or not.

25. The Division Bench of this Court in the case of **Sri Sanatan Dharm Shastri Sanskrit Mahavidyalaya (supra)**, this Court was dealing with a case of an employee who was also not holding the regular post and his services were purely on daily wages basis, still protection of the Act of 1989 and Rules of 1993 thereunder was granted to such an employee.

26. In the case of **Bhopalwala Arya Higher Secondary School Managing Committee (supra)**, the Division Bench of this Court while dealing with a case of temporary employee and after considering the definition of "employee" set out under the Act has given a finding that even an employee appointed on temporary basis could not have been terminated without following the procedure contemplated under Section 18 of the Act.

27. In the **Managing Committee through Chairman (BRID) Dy. G.O.C., Army School and Anr. Vs. Smt. Pushpa Sharma & 4 Ors (supra)**, **Central Academy Society Vs. Rajasthan Non-Government Educational Institutions Tribunal, Jaipur and ors.** also in the similar circumstances, it was held that compliance of Section 18 and Rule 39 is mandatory in nature.

28. Hon'ble Supreme Court while dealing with the case of an unaided institution, in the case of **Gajanand Sharma (supra)**, which has arisen out of the provisions of aforesaid Act of 1989 has categorically held that where the institution is recognized under



the Act then provisions of Section 18 are to be followed directly and prior approval of Director of Education is required to be taken.

Para 5.5. of the judgment is being reproduced as under:

"5.5 Even on fair reading of Section 18 of the Act, 1989, we are of the opinion that in case of termination of an employee of a recognized institution prior approval of the Director of Education or an officer authorised by him in this behalf has to be obtained. In Section 18, there is no distinction between the termination, removal, or reduction in rank after the disciplinary proceedings/enquiry or even without disciplinary proceedings/enquiry. As per the settled position of law the provisions of the statute are to be read as they are. Nothing to be added and or taken away. The words used are "no employee of a recognized institution shall be removed without holding any enquiry and it further provides that no final order in this regard shall be passed unless prior approval of the Director of Education has been obtained." The first part of Section 18 is to be read along with first proviso. Under the circumstances, taking a contrary view that in case of dismissal/removal of an employee of a recognized institution which is after holding the departmental enquiry the prior approval of the Director of Education is not required is unsustainable and to that extent the judgment of the Larger Bench of the Rajasthan High Court in the case of Central Academy Society(supra) is not a good law."

29. Thus, it is clear by perusing the aforesaid judgment that for the purpose of seeking protection of Section 18 under the Act, it is not necessary that the concerned Institution is an aided Institution or not. Merely, if an Institution is recognized under the Act, even



in such circumstances compliance of Section 18 of the Act in mandatory.

30. Thus, even if contention of counsel for the Respondent is taken at its face value that no aid was being received against the post held by the petitioner, even then admittedly being a recognized Institution, the respondent-institution was not absolved from rigour of law as mandated by Section 18 of the Act.

31. Aforesaid judgment in the case of **Gajanand Sharma (supra)** has been followed by this Court in the case of **Yogendra Kumar Mishra (supra)**, Para Nos. 24 and 25 of the judgment are being reproduced as under:

"24. Taking into consideration the overall facts and circumstances of the case as well as the findings and observations of the Courts as given in the judgments referred above, this Court is of the considered opinion that if an employee is continued in service of an educational institution governed by the provisions of the Act of 1989 and the Rules of 1993 even on temporary basis for years together then his services otherwise than by way of disciplinary proceedings can be terminated by the Managing Committee of the institution on the existence of the contingency provided under Clause (iii) of 2nd proviso to Section 18 after giving him six months' notice or salary in lieu thereof or obtaining the consent of the Director of Education or an Officer authorized on his behalf in writing.

25. In the present case, the petitioner, who continued for years together in the service of the respondent-institution, was dismissed/terminated/removed from service without any show cause notice and without prior approval of the Director of Secondary Education or Officer



on his behalf, hence the termination/removal of the petitioner from service by the respondent-institution w.e.f. 24.12.1998 is wholly illegal, arbitrary and unjustified. The findings of the Tribunal is perverse and contrary to the law as referred above."

32. From careful examination of aforesaid consistent views taken by this Court as well as the Hon'ble Supreme Court, it is clear that irrespective of the fact as to whether the petitioner was appointed against sanctioned post or not or the respondent-institution was receiving aid against the post of petitioner or not, in all such cases, compliance of Section 89 and Rule 39 is mandatory.

33. In the instant case, it would also be relevant to mention that conduct of respondent-institution is also not bonafide for the reason that instead of placing correct and complete facts before the Tribunal, the respondent-institution has attempted to mislead the learned Tribunal by placing distorted the facts in reply and it was stated that services of the petitioner were never terminated by the respondent-institution and rather the petitioner had voluntarily abandoned the services. Such contention of the respondent-institution stands falsified merely by perusing the subsequent affidavit filed by the respondent-institution before Tribunal whereby termination order dated 14.05.1999 terminating the services of the petitioner w.e.f. 15.05.1999 was placed on record. Hence, such conduct of unfairness is not acceptable and is liable to be deprecated.

34. Needless to mention here that imparting education is primarily a function of the State, however, at the relevant point of



time and may be on account of lack of proper infrastructure, it was though proper by the policy farmers to introduce a scheme of establishing non-Government Educational Institutions and for that purpose even legislation has been enacted. The State Government has supported such non-Government Educational Institution by providing suitable land on concessional rates, by granting them recognition as well as, in suitable case, providing monetary support by releasing grant in aid. The idea behind establishing such institution was fulfill the object of the State to literate and educate citizens at large scale and such pious object may not be frustrated on account of lack of infrastructure available to the State functionaries and Non-Government Institutions may come forward to share burden and responsibility of the State.

35. However, such institutions, at the time of receiving facilities and aid from the Government, are also under legal obligations to strictly follow provision of Statute as well as Rules and Regulations, so that rights of any person may not be jeopardized.

36. Providing quality education must be first and foremost object of such non-Government institution. Such goal can be achieved only by providing basic essential support to the teaching and non-teaching staff of the institutions so that they may not feel insecured on account of arbitrary hire and fire policies adopted by the respondent-institution contrary to the provisions of law.'

37. In the instant case, without following the mandatory procedure contemplated in the Act of 1989 as well as Rules of 1993, at the whims and fancies of the management committee,



services of the petitioner have been terminated in quite arbitrary and illegal manner. Learned Tribunal has also utterly failed to appreciate the facts of the case and to apply the provisions of law in a correct manner. Hence, order dated 14.07.2000 passed by the learned Tribunal is liable to be interfered with and consequently termination order dated 14.05.1999 issued by the respondent-institution is hereby quashed. The respondent-institution is directed to reinstate the petitioner by maintaining continuity in service. However, the petitioner would not be entitled for actual monitory benefits of the intervening period, but the fixational benefits, seniority and other admissible benefits shall be granted to the petitioner on notional basis. Necessary orders in this regard be passed by respondent No.1 within a period of two months from the date of receipt of certified copy of the instant order. Respondent No.2 is directed to ensure compliance of the instant Judgment/Order.

38. In view of the above, the writ petition stands allowed.

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

(ANAND SHARMA),J

pcg/02