

(2006) 08 RAJ CK 0049

In the Rajasthan High Court

Case No : Civil Special Appeal Writ No. 1056 of 2005

Agrawal Kanya Pathshala (Shri) Samiti and Another

APPELLANT

Vs

Shri Gopal Krishan Sharma and Others

RESPONDENT

Date of Decision : 24-08-2006

Acts Referred:

Industrial Disputes Act, 1947 — Section 33(2)
Rajasthan Non-Government Educational Institutions (Recognition, Grant-in-aid and Service Conditions etc. Rules, 1993 — Rule 30(b), 39(2)
Rajasthan Non-Government Educational Institutions Act, 1989 — Section 18

Citation : (2006) 4 RLW 3312

Hon'ble Judges : S.N. Jha, C.J.; Prem Shanker Asopa, J

Bench : Division Bench

Advocate : Ashok Gaur, for the Appellant; Sunil Samdariya and B.L. Awasthi, for State, for the Respondent

Final Decision : Dismissed

Judgement

Prem Shanker Asopa, J.—The instant special appeal was listed on 21.4.2006 for hearing on stay vacating application. The counsel for the parties agreed on that day that instead of deciding the stay matter, the appeal itself may be Finally decided. Accordingly, the counsel for the parties made submissions and order was reserved.

2. This special appeal is directed against the judgment of the learned Single Judge dated 24.8.2005, whereby he dismissed the writ petition filed by the appellants against the order of the Rajasthan Non-Government Educational Institutions Tribunal, Jaipur (for short "the Tribunal") dated 24.9.2003, whereby the appeal filed by respondent No. 1 was accepted and he was reinstated in service with all consequential benefits.

3. The respondent No. 1 first filed a writ petition against the order of termination dated 14.8.1993 which was registered as S.B. Civil Writ Petition No. 5542/1993 and withdrew the same with the permission to file appeal before the Tribunal,

which was granted by this Court vide its order dated 22.12.1999. Thereafter, the respondent No. 1 filed the aforesaid appeal bearing number 17/2000 before the Tribunal along with an application for condonation of delay. The case of respondent No. 1 before the Tribunal was that he was appointed on probation as Sr. Clerk (UDC) vide order dated 14.9.1991 for a period of one year and that order was extended for further one year vide order dated 16.8.1992 and his services have been terminated on 14.8.1993 w.e.f. 16.9.1993 despite the fact that prior approval of the competent authority was refused on 7.9.1993 and 9.9.1993, the same was given effect. The order of termination is punitive in nature as earlier to it, his explanation for absence was sought and the same has been passed without following the provisions of inquiry. The further case of the petitioner was that the termination order has been passed without making compliance of Section 18 of the Rajasthan Non-Government Educational Institutions Act, 1989 (for short "the Act of 1989") and Rule 39(2) of the Rajasthan Non-Government Educational Institutions Rules, 1993 (for short "the Rules of 1993"). After notice to the appellants, the delay was condoned.

4. The appellants filed reply to the said appeal filed by respondent No. 1 and stated therein that in case of discharge of a probationer on account of not using sufficient opportunities given to the employee, who further failed to give satisfaction, no inquiry is necessary. The work performance of the extended period of probation of respondent No. 1 was adjudged by the Managing Committee in its meeting dated 19.6.1993 and it unanimously came to the conclusion that respondent No. 1 has not used sufficient opportunities and further failed to give satisfaction, therefore, his services are being dispensed with. The said decision along with complete record of the Managing Committee was also sent to the Deputy Director (Women), Education, Ajmer Circle, Ajmer vide letter dated 13.8.1993 for approval. On 7.9.1993, the Deputy Director gave reply that the Institution has not acted in accordance with Rule 39(2)(a) to (h) of the Rules of 1993, therefore, further proceedings could be taken as per rule after taking action accordingly. On 8.9.1993, the Managing Committee clarified its position and submitted that in case of a probationer, the said Rule 39(2)(a) of the Rules of 1993 is not applicable and prior approval was sought under Rule 30(b) of the Rules of 1993, being a case of discharge of a probationer. Then again on 9.9.1993, the Deputy Director (Women), Education, Ajmer Circle, Ajmer wrote a letter to the appellant that the approval is not possible without making compliance of Rule 39(2) of the Rules of 1993. The appellant has also stated that the action of the Government Official in issuing the aforesaid two letters is arbitrary and further they have not examined the said issue of a termination simpliciter of a probationer under Rules 30(b) of the Rules of 1993.

5. The State and its functionaries i.e. respondent Nos. 2 to 4 of the present appeal have also filed reply and have nowhere contended that Rule 39(2) of the Rules of 1993 is applicable and have finally prayed for dismissal of the appeal.

6. After hearing both the parties, the Tribunal vide its judgment dated 24.9.2003,

gave a finding in para No. 11 that services have not been terminated by way of punishment, therefore, inquiry is not necessary but still held that there is non-compliance of Section 18 of the Act of 1989 and Rule 39(2) of the Rules of 1993, which are meant for grant of reasonable opportunity and inquiry and, therefore, the impugned order was set-aside and directed to reinstate the respondent No. 1 with all consequential benefits.

7. The appellants filed the writ petition against the order of the Tribunal dated 24.9.2003, whereby respondent No. 1 has been reinstated with all consequential benefits. In brief the facts of the writ are that the respondent No. 1 was appointed on probation for one year as Senior Clerk vide order dated 14.9.1991. Before expiry of the said probation period, the Managing Committee reviewed his performance and decided to extend the probation period for further one year vide order dated 16.8.1992 i.e. up to 15.9.1993 and before completion of the said extended period of probation, the Managing Committee again reviewed the performance of respondent No. 1 and was of the unanimous opinion that respondent No. 1 as U.D.C. during his probation period, has not made sufficient use of his opportunities and failed to give satisfaction, therefore, he is being discharged. The said decision along with complete record of the Managing Committee was also sent to the Deputy Director (Women), Education, Ajmer Circle, Ajmer vide letter dated 13.8.1993 for approval. On 7.9.1993, the Deputy Director gave reply that the Institution has not acted in accordance with Rule 39(2)(a) to (h) of the Rules of 1993, therefore, further proceedings could be taken as per rule after taking action accordingly. on 8.9.1993, the Managing Committee clarified its position and submitted that in case of a probationer, the said Rule 39(2)(a) of the Rules of 1993 is not applicable and the action is to be taken as per Rule 30(b) of the Rules of 1993, being a case of discharge of a probationer. Then again on 9.9.1993, the Deputy Director (Women), Education, Ajmer Circle, Ajmer wrote a letter to the appellant that the approval is not possible without making compliance of Rule 39(2) of the Rules of 1993.. The appellant has also stated that the action of the Government official in issuing the aforesaid two letters is arbitrary and further they have not examined the said issue of a termination simpliciter of a probationer under Rules 30(b) of the Rules of 1993.

8. In the writ petition, the appellants have further stated that in case of discharge of a probationer, who failed to avail sufficient opportunities and further failed to give satisfaction, no inquiry under Rule 39(2) of the Rules of 1993 is necessary. The appellants have further stated in the writ petition that the present case is a case of termination simpliciter, therefore, there was no justification for issuing direction by the Deputy Director, Education, to conduct inquiry under Rule 39(2) of the Rules of 1993. The Deputy Director has further failed to determine the scope of both the Rules i.e. Rule 30(b) and 39(2) of the Rules of 1993, out of which former Rule is applicable in case of a probationer, whose services have been simply discharged and the later Rule is applicable only when the termination order is founded on the basis of misconduct/stigma. The present

appellants have also stated in the writ petition that the judgment of the Tribunal is self contradictory. In para 11 of the said judgment, the Tribunal has given the finding that the order of termination is a termination simpliciter, therefore, no inquiry is necessary, but in para 13 of the said judgment, the Tribunal has declared the termination order illegal on the ground that compliance of Section 18 of the Act of 1989 and Rule 39(2) of the Rules of 1993 has not been made ignoring the fact that the said Section and Rule is applicable when the order of termination is punitive in character. The Tribunal has further considered the issue of prior approval, which is also required u/s 18 of the Act of 1989.

9. The respondent No. 1 filed reply to the writ petition stating therein that Deputy Director vide its letters dated 7.9.1993 and 9.9.1993 rightly directed the petitioner-Institution to conduct inquiry under Rule 39(2) of the Rules of 1993. Thus, the application seeking prior approval for terminating the services of respondent No. 1 was rejected twice. The aforesaid rejection never came to be challenged by the petitioner-Institution before any competent forum/Court, thus, the rejection attained finality. The counsel for respondent No. 1 further stated in the reply that the termination order was per se stigmatic and, therefore, the Tribunal rightly disapproved the same.

10. The learned Single Judge, after hearing both the parties, vide order dated 24.8.2005, upheld the order of the Tribunal on the ground that the procedure laid down under Rule 30 and 39(2) of the Rules of 1993 has to be followed and in the instant case, the institution overstepped the procedure and, therefore, committed an illegality in terminating the services of the employee.

11. The submission of the counsel for the appellants is that Section 18 of the Act of 1989 and Rule 39(2) of the Rules of 1993 are not applicable in case of a probationer, therefore, the Tribunal has committed serious error in holding that the compliance of Section 18 of the Act of 1989 and Rule 39(2) of the Rules of 1993 has not been made. The learned Single Judge has further held that the compliance of Rule 30 and 39(2) of the Rules of 1993 has not been made, whereas the compliance of Rule 30 has been made and Rule 39(2) of the Rules of 1993 is not applicable. The counsel for the appellants further submitted that the impugned order is a termination simpliciter and in support of the aforesaid submission, the counsel placed reliance on *State of Punjab and Others Vs. Sukhwinder Singh*, . The counsel for the appellants has also contended that the provisions of prior approval are uncanalised and unguided, therefore, the same are not of regulatory in nature. Reliance has also been placed on *C/m St. John Inter College v. Girdhary Singh and Ors.* reported in 2001 AIR SCW 1468.

12. The submission of the counsel for the respondents is that the prior approval as required under Rule 30(b) of the Rules of 1993, has been refused twice, therefore, the impugned order of termination is illegal. Otherwise also, the order is per se stigmatic and, therefore, the compliance of Section 18 of the Act of 1989 and Rule 39(2) of the Rules of 1993 is necessary, which has admittedly not been made.

13. We have gone through the record of the special appeal as also the record of the writ petition and further considered the rival submissions of the parties.

14. It would be useful to quote Section 18 of the Act of 1989, Rule 30(b) and main Rule 39(2) of the Rules of 1993, language of termination order dated 14.8.1993 (Annexure-3), directions dated 7.9.1993 and 9.9.1993, issued by the Deputy Director, Education, Ajmer Circle, Ajmer, relevant portion of para No. 11 and para No. 13 of the judgment of the Tribunal dated 24.9.2003 and the relevant portion of the order of the learned Single Judge dated 24.8.2005, which are as under:

Section 18 of the Rajasthan Non-Government Educational Institutions Act, 1989:

18. Removal, dismissal or reduction in rank of employees - Subject to any rules that may be made in this behalf, no employee of a recognized institution shall be 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)....

(ii)....

(iii)....

Rules 30(b) and 39(2) of the Rajasthan Non-Government Educational Institutions Rules, 1993:

30. Period of Probation ?

(a)....

(b) If it appears to the Managing Committee, at any time, during or at the end of the period of probation, that the employee has not made sufficient use of his opportunities or has failed to give satisfaction, the Managing Committee may discharge or terminate him from service with prior approval of the authority competent to approve the appointment (Appendix IX).

Provided that the Managing Committee may, if it so thinks fit in any case, extend the period of probation not exceeding one year.

39. Removal or Dismissal from service -(1)....

(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)....
- (b)....
- (c)....
- (d)....
- (e)....
- (f)....
- (g)....
- (h)....

The language of termination order dated 14.8.1993 (Annexure-3):

Jh vxzoky ckfydk lhfu;j mPp ek/;fed fo|ky;

enuxat&fd"kux< ftyk vtesj ?jkt-? 305801

jkT; ljdkj ls lgk;rk ,oa ekU;rk izkIr

dzekad % LFkku@lfpo@Lis"ky@1993&94@3

Jh xksiky d`".k "kekZ]

ofj"B fyfid]

Jh vxzoky ckfydk ek/;fed fo|ky;]

flVh jksM] enuxat&fd"kux<

ftyk vtesj ?jkt-?

fo"k; % ijhfo{kk dh dkykof/k esa lsoksUeqfDr ckcr%

Jh vxzoky ckfydk ek/;fed fo|ky; flVh jksM enuxat&fd"kux< esa ofj"B fyfid ds in ij fnukad 16-6-91 ls fnukad 15-9-93 rd vki ijhfo{kk dky ij fu;qDr gSa A

izcU/kdkfj.kh lfefr dh cSBd fnukad 19-6-93 ds izcU/k lfefr dh loZIEer jk; ,oa fu.kZ; ds vuqlkj fd Jh xksiy d`".k "kekZ ifj"B fyfid us vius ijhfo{kk dky ds nkSjku vius voljksa dk i;kZIr mi;ksx ugha fd;k gS rFkk larks"kizn lsok;sa nsus esa foQy jgs gS A dh lsok;sa laLFkk ds fgr ij izfrdqy izHkko Mkys fcuk pkyw ugha j[kh tk ldrh gSa A vr% budks lsoksUeqfDr fd;k tkos A

vr% laLFkk dks vkidh lsokvksa dh vko";drk ugha gS A vr% vkidks fnukad 16-9-93 ls lsoksUeqfDr fd;k tkrk gSA fu;ekuqlkj vkidh ru[;kg ,oa vU; ns; /kujkf"k tks Hkh curh gks og dk;kZy; le; esa vkdj fu;ekuqlkj izkIr dj ysos vkSj vius in dk dk;ZHkkj Jh v"kkksd xks;y dfu"B fyfid dks laHkykdj jlhn izkIr djsa A fu;ekuqlkj fo|ky; ls uks M;wt izkIr djsa A

Hkonh;

ga@ &

?jke xksiky vxzoky?

lfpo

Jh vxzoky ckfydk ek/;fed fo|ky;]

enuxat&fd"kux<

izfrfyfi okLrs lwpukFkZ ,oa vko";drk dk;Zokgh%&

1 Jherh chuk "kekZ] iz/kkuk/;kfidk Jh vxzoky ckfydk ek/;fed fo|ky;]

enuxat&fd"kux<

2 Jh v"kkSD xks;y dfu"B fyfid] Jh vxzoky ckfydk ek/;fed fo|ky;] enuxat&fd"kux<

Hkonh;

ga@ &

?jke xksiky vxzoky?

lfpo

Jh vxzoky ckfydk ek/;fed fo|ky;]

enuxat&fd"kux<

Relevant portion of the direction dated 7.9.1993, issued by the Deputy Director, Education, Ajmer Circle, Ajmer:

dk;kZy; mifunsf"kd f"K{kk ?efgyk? vtesj o`r vtesj] jktLFkku

dzekad % mifuns"ld@e@vt@lk&3@Qk&4302@93@3642 fnukad 7-9-93

lfpo]

izcU/kdkfj.kh lfefr Jh vxzoky dU;k ikB"kkYk ,oa

Jh vxzoky ckfydk ek/;fed fo|ky;]

lhVh jksM] enuxat&fd"kux<]

ftyk vtesj ?jktLFkku?

fo"k;%& fu;e 30[k jktLFkku xSj ljdkjh "kSf{kd laLFkk ?ekU;rk] lgk;rk vuqnku vkSj Isok "krsZ vkfn? fu;e] 1993 ds vUrxZr ifjoh{kk dh dkykfof/k ij fu;qDr ofj"B fyfid Jh xksiky d`".k "kekZ dks IsokUeqDr djus ds fy, iwoZ vuqeksnu pkgus ckr A

izlax%&vkidk i= ekad% LFkku@lfpo@Lis"ky@1993&94@2 fnukad 13-8-93

mijksDr fo"k; ,oa izklafxd i= ds lanHkZ esa ys[k gS fd vkus vkids fo|ky; esa dk;Zjr Jh xksiky d`".k "kEkkZ ofj"B fyfid dks IsokUeqDr djus ds fy, bl dk;kZy; } kjk iwoZ vuqeksnu pkgk gSA

bl laca/k esa ys[k gS fd vki }kjk jktLFkku xSj ljdkjh "kSf{kd laLFkk ?ekU;rk] lgk;rk vuqnku vkSj Isok "krsZ vkfn? fu;e 1993 ds vUrxZr fu;e 39?2? esa fufnZ"V fu;e ?d? Is ?t? ds rgr dk;Zokgh ugha dh gS A

vr% fu;ekuqlkj dk;Zokgh IEikfnr djus ds mijUr gh izdj.k ij vfxze dk;Zokgh laHko gS A

lwpukFkZ izsf"kr gS A

lfpo

mifuns"kd f"kk{kk efgyk

Relevant portion of the direction dated 9.9.1993, issued by the Deputy Director, Education, Ajmer Circle, Ajmer:

dk;kZy; mifuns"kd efgyk? f"kk{kk] vtesj o`r vtesj

dzekad% mfuf"kk@e@vt@lk&3@93@3655 fnukad 19 flrEcj] 93

lfpo

vxzoky cfydk ek;/fed fo|ky;

enuxat&fd"kux<]

fo"k; %& fu;e 30[k jktLFkku xSj ljdkjh "kSf{kd laLFkk ?ekU;rk] lgk;rk vuqnku vkSj Isok "krsZ vkfn? fu;e] 1993 ds vUrxZr ifjoh{kk dh dkykof/k ij fu;qDr ofj"B fyfid Jh xksiky d`".k "kekZ dks IsokeqDr djus ds fy, iwoZ vuqeksnu pkgus ckcr A

izlax% vkidk i=kad 1449 fnukad 8-9-93

mijksDr fo"k;kUrxZr ekeys esa iqu% iwjs izdj.k dk voyksdu dj vkidks lwfpr fd;k tkrk gS fd bl izdj.k esa jktLFkku xSj ljdkjh f"kk{k.k laLFkk ?ekU;rk] lgk;rk vuqnku vkSj Isok "krsZ vkfn? fu;e 1993 ds fu;e 39?2? ds vUrxZr dk;Zokgh fd;s fcuk bl dk;kZy; }kjk Isok lekfir fd;s tkus gsrq vuqeksnu fd;k tkuk laHko ugha gS A

ga@ &

mifuns"kd f"kk{kk efgyk

vtesj] o`r] vtesj A

Relevant portion of para No. 11 and para No. 13 of the judgment of the Tribunal dated 24.9.2003 :

11----- vihykFkhZ ds fo:) izLrqr izdj.k% esa dksbZ nqjpkj.k dk vkjksi izR;FkhZ laLFkk }kjk vf/kjksfir ugha fd;k x;k gS] vihykFkhZ dh Isok lekfir Is iwoZ nqjpkj.k ds laca/k esa dksbZ tkap dh dk;Zokgh Hkh yfEcr ugha gS A vihykFkhZ dh Isok lekfir mldh vlarks"ktud Isokvksa ds vk/kkj ij fd;s tkus dks mYys[k izR;FkhZ laLFkk us vius tokc vkSj vkns"k esa of.kZr fd;k gS A fufoZokn :i Is vihykFkhZ dh Isok ifjoh{kkdky esa gh vlarks"ktud gksus ds vk/kkj ij lekIr dh x;h gS A ,sls ekeys esa tkap dh dk;Zokgh fd;k tkuk vko";d u gksus dh voLFkk

izR;FkhZ laLFkk }kjk izLrqr fof/k fofu"p; vkj,y-MCY;w- 2001?1? jkt- ist 399 pydflag mTtoy cuke ,;jQkslZ] Ldwy] tks/kiqj ,oa vU; esa nh x;h gS A vihykFkhZ dh Isok vlarks"ktud dk;Z ds vk/kkj ij ifjoh{kk vof/k esa Isok lekIr ds :i esa dh x;h gS A vihykFkhZ dh Isok fdLh n.M Li:i lekIr ugha dh x;h gS A blfy, bl izdj.k esa tkap dh dk;Zokgh fd;k tkuk gekjs fouez erkuqlkj vko";d ugha Fkh A-----

13- bl izdkj vihykFkhZ ds Isok izR;FkhZ laLFkk }kjk jkt- xSj ljdkjh "kSf{kd laLFkk vf/kfu;e 1989 dh /kkjk 18 ,oa fu;e 1993 ds fu;e 39?2? ds izo/kkuksa ds foijhr ,oa izR;FkhZ laLFkk dh izcU/k lfeFr us fcuk f"kk{kk fnus"kd dh iwoZ vuqefr ds lekIr dh gS] tks fdLh izdkj ls fu;ekuqlkj ,oa fof/k IEer ugha gS A vihykFkhZ dh Isok lekIr djus ls iwoZ mijksDr of.kZr nksuksa izko/kkuksa dh ikyuk fd;k tkuk izR;FkhZ laLFkk dh izcU/k lfeFr ds fy, vko";d Fkk ysfdu budh ikyuk izLrqr izdj.k esa izR;FkhZ laLFkk dh izcU/k lfeFr }kjk ugha dh x;h gS bl izdkj ls vihykFkhZ dh Isok;sa fcuk fof/kd izko/kkuksa dh ikyuk fd;s lekIr dh x;h gS] tks fof/k IEer ugha gS A

The relevant portion of the order of the learned Single Judge dated 24.8.2005:

But where the procedure is laid down in the Rules 30 and 39(2) of 1993 Rules, the Institution has to follow the procedure. In the instant case the Institution overstepped the procedure and therefore committed illegality in terminating the services of the employee.

15. The learned Counsel for the appellants cited two judgments in support of his submissions. In *State of Punjab and Ors. v. Sukhwinder Singh* (supra), it has been held that a probationer is on test and has no right to the post and in case of simple termination, no inquiry is necessary, even if he remained absent continuously for 22 days. The relevant portion of para Nos. 19 and 20 of the aforesaid judgment are as under:

19...Where a superior officer, in order to satisfy himself whether the employee concerned should be continued in service or not makes inquiries for this purpose, it would be wrong to hold that the inquiry which was held, was really intended for the purpose of imposing punishment. The superior authorities of the departments have to take work from an employee and they are the best people to judge whether an employee should be continued in service and made a permanent employee or not having regard to his performance, conduct and overall suitability for the job. A probationer is on test and a temporary employee has no right to the post....

20. In the present case neither any formal departmental inquiry nor any preliminary fact-finding inquiry had been held and a simple order of discharge had been passed. The respondent was on probation having been appointed about eight months back. The period of probation gives time and opportunity to the employer to watch the work, ability, efficiency, sincerity and competence of the servant and if he is found not suitable for the post, the master reserves a right to dispense with his service without anything more during or at the end of the prescribed period, which is styled as period of probation. The mere holding of

preliminary inquiry where explanation is called from an employee would not make an otherwise innocuous order of discharge or termination of service punitive in nature. Therefore, the High Court was clearly in error in holding that the respondent's absence from duty was the foundation of the order, which necessitated an inquiry as envisaged under Rule 16.24(ix) of the Rules....

16. The another judgment of C/m. St. John Inter College v. Girdhari Singh and Ors. (supra), cited by the counsel for the appellants, is of minority institution, which is governed by Article 30(1) of the Constitution, which is governed by Article 30(1) of the Constitution of India and have some more independence than any other private institution as per Article 30 of the Constitution of India, which confers right on minority community to establish and administer educational institutions of their choice. Regulations, therefore, could always be made to maintain educational character and standard of institution and for that purpose to lay down qualifications or conditions of service, to ensure orderly, efficient and sound administration and to prevent mala administration, to ensure efficiency and discipline of the institution and for several other objectivities, which would be for the benefit of the institution and which would not offend the right engrafted under Article 30. While dealing with the uncanalised and unguided power in para No. 6, violation of Article 14 of the Constitution of India has also been considered. The relevant portion of para No. 6 of the aforesaid judgment is as follows:

6....The conspectus of the aforesaid decision would indicate that there would be no bar for the Government to have regulatory measures for ensuring a standard of excellence of the institutions and such a measure would not in any way affect the right of the minority to administer its institutions engrafted in Article 30 of the Constitution. But notwithstanding the same, if the so called regulatory measures conferring power on any specified authority, without indicating any guidelines for exercise of that power, then exercise of such power by the appropriate authority would offend the provisions of Article 14 and would not be allowed to be retained, as that would amount to an arbitrary inroad into the right of the minority, in the matter of administering its institutions. In another words, if the regulatory provision conferring power on the educational authority is uncanalised and unguided and does not indicate any guidelines under which the educational authority could exercise the said power, then in such a case, the conferment of a blanket power on the educational authority would interfere with the right of control of the employer-minority institution in the matter of exercising disciplinary control over the employees of the institution....

17. To decide whether the order is a termination simpliciter or stigmatic, the language of the same is to be seen. A bare perusal of the language of aforesaid termination order (Annexure-3) would reveal that the Management Committee was of unanimous view that respondent No. 1 has not used sufficient opportunities and further failed to give satisfaction to the Management, therefore, his services are being dispensed with. In such circumstances, the

present case is a simple-case of termination and further there is no averment of respondent No. 1 that the language is camouflage, but in fact the order is stigmatic in character on account of some misconduct, therefore, the order of termination is termination simpliciter and no compliance of Section 18 of the Act of 1989 and inquiry under Rule 39(2) of the Rules of 1993 is necessary. In case of simple termination of a probationer, neither Section 18 of the Act of 1989 nor Rule 39(2) of the Rules of 1993 is applicable.

18. As indicated above, the order of termination is a termination simpliciter and for making compliance of Rule 30(b) of the Rules of 1993, prior approval was sought on 13.8.1993 before passing termination order dated 14.8.1993, w.e.f. 16.9.1993, but the same was neither approved nor disapproved on the wrong ground of conducting inquiry under Rule 39(2) of the Rules of 1993, without making any distinction between Rule 30(b) and 39(2) of the Rules of 1993. Rule 30(b) of the Rules of 1993 is applicable in case of a probationer when the termination order is a termination simpliciter and if the order casts stigma, then inquiry is necessary. A probationer has always been treated differently from the permanent employees. The law is well settled in case of a probationer, which may be summarized as under:

- (1) A probationer has no right to hold the post.
- (2) His work and performance are under watch to find out a suitability for further retention and confirmation of his services.
- (3) The principles of natural justice are not applicable in case of a probationer.
- (4) The other higher authority or regulatory authority should also be slow in making interference to continue a probationer by insisting to continue to conduct inquiry by finding out the misconduct when there is none on the record and even if the conduct has been considered, then also the same has not been made foundation for termination.
- (5) The approving authority cannot act as an appellate authority while considering the action taken by the Management.

19. In our considered opinion, the order does not cast stigma and the same was simpliciter in nature, therefore, neither Section 18 of the Act of 1989 nor Rule 39(2) of the Rules of 1993 is applicable and there is no justification for issuing direction to conduct inquiry under Rule 39(2) of the Rules of 1993 before grant of approval and further there is also no justification for not dealing the matter as a case of termination simpliciter of a probationer and the grant of approval, as required under Rule 30(b) of the Rules of 1993. It is settled position of law that in case of prior approval, either action is to be approved or disapproved. The authority concerned cannot act as an appellate authority to issue direction to make the compliance of some other provisions of the Act, which are not applicable, therefore, issuance of the direction to make an inquiry under Rule 39(2) of the Rules of 1993, is wholly unwarranted. The approving authority has a

limited jurisdiction and cannot act as an appellate authority. The Supreme Court in the case of *The Lord Krishna Textile Mills Vs. Its Workmen*, , while dealing with the scope of Section 33(2)(b) of the Industrial Disputes Act, 1947, has held that the Tribunal was not justified to assume powers of an appellate court which alone is entitled to go into all questions of fact. The question about the adequacy of evidence or its sufficiency or satisfactory character can be raised in a court of facts and may fall to be considered by an appellate court which is entitled to consider the facts, but those considerations are irrelevant where the jurisdiction of the court is limited as u/s 33(2)(b) of the Industrial Disputes Act, 1947. The relevant portion of para No. 17 of the aforesaid judgment is as follows:

17...Nor is it justified while holding the enquiry to assume powers of an appellate court which alone is entitled to go into all questions of fact. The question about the adequacy of evidence or its sufficiency or satisfactory character can be raised in a court of facts and may fall to be considered by an appellate court which is entitled to consider the facts; but these considerations are irrelevant where the jurisdiction of the court is limited as u/s 33(2)(b). And if the Tribunal assumes jurisdiction not vested in it by law, and consequently refuses to accord approval to the action taken by the employer its order is patently erroneous in law.

20. The submission of Mr. Samdariya, the counsel for respondent No. 1 is that the order of termination is void as no prior approval was accorded even as required under Rule 30(b) of the Rules of 1993 from the competent authority. It is true that no specific prior approval was granted by the competent authority. It is also equally true that the same was not disapproved.

21. The directions to conduct inquiry under Rule 39(2) of the Rules of 1993, is wholly irrelevant in case of a probationer, whose services have been dispensed with on being found unsatisfactory. Thus, there is no justification in issuing the said directions by the approving authority, which can only be issued by the appellate court, as held by the Supreme Court in the case of *The Lord Krishna Textile Mills v. Its Workmen* (supra).

22. Though the Tribunal, in para No. 11 of its judgment, has held that termination was not by way of punishment and no inquiry was necessary, but still insisted on compliance of Section 18 of the Act of 1989 and Rule 39(2) of the Rules of 1993 relating to inquiry. The directions dated 7.9.1993 and 9.9.1993 for inquiry under Rule 39(2) of the Rules of 1993 do not appear to be in accordance with law. As observed above, the directions do not amount to either giving or refusing "prior approval" under Rule 30(b) of the Rules of 1993.

In the ordinary course, therefore, we should have remitted the matter for fresh consideration. However, the termination order was passed on 14.8.1993 against which appeal was filed by the respondent No. 1 which was allowed and writ petition of the Management was dismissed by the learned Single Bench. In the circumstances, remand after thirteen years for approval may not be proper. It will only prolong the litigation and agonies of the parties. In order to give quietus

to the dispute, therefore, having held that it was a case of simple discharge we do not propose to send the matter back to the Authority. We are of opinion that it was fit case for grant of approval under Rule 30(b) of the Rules of 1993 and the competent authority acted illegally in not passing order to that effect.

23. In view of the above, we allow the present special appeal, set aside judgment of the learned Single Judge dated 24.8.2005 and the judgment of the Tribunal dated 24.9.2003 and upheld the termination order dated 14.8.1993 of respondent No. 1. There shall be no order as to costs.