

(1973) 09 CAL CK 0005
In the Calcutta High Court

Ajit Kumar Mahanti

APPELLANT

Vs

Managing Committee of Jhilimili High School and Another

RESPONDENT

Date of Decision : 21-09-1973

Acts Referred:

Constitution of India, 1950 — Article 12, 226, 311

Citation : (1973) 09 CAL CK 0005

Hon'ble Judges : Salil Kumar Hazra, J;Amarendra Nath Sen, J

Bench : Division Bench

Advocate : Arun Kr. Dutta and Harasit Chakraborty, for the Appellant;Noni Coomar Chakraborty and Madan Mohan Mullick for Respondents No. II, for the Respondent

Judgement

Sen, J.—In the case of Subodh Chandra Dewan Vs. Managing Committee, Belgachia Mahatma Aswini Datta Vidyapith, Belgachia and Others, , P. K. Banerjee, J. has held that no writ under Article 226 lies against the Managing Committee of the School. In that case the Headmaster of the School was removed by the Managing Committee from the post of the Headmaster of the School and Headmaster made an application to this Court under Article 226 of the Constitution for the issue of appropriate writs for quashing the said order of his removal and for other reliefs. P. K. Banerjee, J. refused to issue any rule holding that no writ would lie against the Managing Committee. P. K. Banerjee, J. in his judgment has held for reasons stated in his judgment that the Managing Committee is not a statutory body and as such no writ could be issued against the Managing Committee under Article 226 of the Constitution. P. K. Banerjee, J. has observed at page 25, "In a writ proceeding, in my opinion, for an issuance of a writ against any authority it must be a statutory body and the statutory body must have acted contrary to the statutory rules or regulations.

2. In the present case the petitioner who happens to be the Headmaster of Jhilimili High School has been removed by the Managing Committee of the said School. The Headmaster has presented the present petition for setting aside,

canceling, rescinding and quashing the order of his dismissal and for other appropriate writs, challenging the validity of the order of his dismissal. The present petition came up for hearing before Anil Kumar Sen, J. In view of the decision of P. K. Banerjee, J. in the case of Subodh Chandra Dewan, Anil Kumar Sen, J., was pleased to refer the matter to a larger Bench by his order dated 19.2.1973. While referring the matter to a larger Bench, Anil Kumar Sen, J. does not appear to have expressed any views on the question. The learned Chief Justice was pleased to assign the matter to the Bench presided over by me and the matter, has, therefore, come up for consideration before this Bench.

3. At the outset I wish to observe that in this proceeding we are only considering the question whether a writ under Article 226 lies against the Managing Committee of any non-Government School affiliated to the Board of Secondary Education in respect of any order of the Managing Committee which has the effect of adversely affecting the employment of any teacher of the institution, whether by termination of his employment or otherwise, and we are not adjudicating upon any other question on the merits of the order passed. The question before us really is as to whether the teacher of a non-Government School, who makes any grievance against the Managing Committee thereof in respect of its order affecting his employment as teacher, by termination of his employment by dismissal or by prejudicially affecting his employment otherwise, can invoke the jurisdiction under Article 226 of the Constitution for redress of the grievance. In the present proceeding, we are only concerned with this question.

4. In the case of (1) S.R. Tewari Vs. District Board Agra and Another, the Supreme Court formulated the exceptions to this general rule that when there is a termination of a contract of service a declaration that the contract of service still subsisted would not be made by saying.... "but this rule is subject to certain well-recognised exceptions, it is open to the Courts, in an appropriate case to declare that a public servant who is dismissed from service in contravention of Article 311, continues to remain in service, even though by so doing the State is in effect forced to continue to employ the servant whom it does not desire to employ. Similarly, under the Industrial Law, jurisdiction of the Labour and Industrial Tribunals to compel the employer to employ a worker, whom he does not desire to employ, is recognized. The Courts are also invested with the power to declare invalid the act of a statutory body, if by doing the act the body has acted in breach of a mandatory obligation imposed by the statute, even if by making the declaration the body is compelled to do something which it does not desire to do".

5. To attract the jurisdiction of this Court under Article 226 by way of an exception to the general rule that no writ will lie to quash an order terminating a contract of service, albeit illegally, it is, therefore, necessary in the instant case that the order must be the order of a statutory body acting in breach of a mandatory obligation imposed by a statute. The question involved in the present proceeding is whether the Managing Committee of the School is a statutory body.

6. P. K. Banerjee, J. in his judgment in Subodh Chandra Dewan's case has carefully analysed the relevant provisions of the statute and the rules and has considered various decisions and has come to the conclusions that the Managing Committee of a school is not a statutory body and a writ would not, therefore, lie against the Managing Committee. The correctness of the said decision of P. K. Banerjee, J. questioned in the present proceeding.

7. Mr. Arun Kumar Dutta, learned Counsel appearing in support of the present petition, has contended before us that the Managing Committee of a recognized school is a statutory body and the finding of P. K. Banerjee, J. to the contrary is not right. In support of his contention that the Managing Committee of a recognized school is a statutory body. Mr. Dutt has argued that the Managing Committee of a recognized school is the creature of the West Bengal Board of Secondary Education Act, 1963 and the composition, powers and functions, of the Managing Committee are regulated by the said Act and by the rules framed by the State Government under the Act. Mr. Dutt has drawn our attention to various provisions contained in the Rules framed by the State Government under the said Act (hereinafter referred to as the said Rules). Mr. Dutt has drawn our attention to section 2(d) of the said Act which provides that "Managing Committee need in reference to an institution includes the Governor or the Governing Body of such an institution.

8. He has drawn our attention to section 3(18) which lays down that in the Board itself there must be a member of the Managing Committee of a recognized institution. He has also drawn our attention to sections 15 and 22 where the Managing Committee has been mentioned. He has pointed out that u/s 45(2) as amended by the West Bengal Board of Secondary Education (Amendment) Act, 1969 (West Bengal Act XIV of 1969), the State Government has been authorized to make rules for carrying out the purposes of this Act and has been particularly authorized to frame rules with regard to the composition, powers and functions of Managing Committee of institutions. In drawing our attention to the various provisions contained in the Rules Mr. Dutt has commented that the Managing Committee is a mandatory requirement of the statute in respect of every recognized non-Government institution and the composition of the Managing Committee and its powers and duties are provided in the said Rules. He has placed particular reliance on Rule 3 lays down that "every recognized non-Government institution shall have a committee to be constituted in the manner and for the purpose hereinafter appearing, and Rule 28 prescribes the powers of the Managing Committee and also makes provisions as to how the said powers are to be exercised. He has argued on the basis of the provision contained in Rule 12 and also in Rule 28 that the Managing Committee is subject to the approval of the Board and it is his argument that the Board which is undoubtedly a statutory body exercises power and control over the Managing Committee. It is the argument of Mr. Dutt that as the Act and the Rules require that there must be a Managing Committee of every recognized school and the rules framed by the State Government, which undoubtedly are statutory rules, make provisions

as to how the Managing Committee is to be constituted and as to how it should function and also about the powers of the Managing Committee. The Managing Committee must be considered to be a statutory body. According to Mr. Dutt, the Managing Committee comes into existence by virtue of the requirements of the said Act and the said rules, and the composition, powers and functions are regularized by the statutory provisions and the Managing Committee must, therefore, be considered to be a statutory body.

9. Mr. Dutt, has further contended that even if the Managing Committee be and not considered to be a statutory body appropriate writs under Article 226 of the Constitution can be directed against the Managing Committee for compelling the Managing Committee to act in accordance with the statutory provisions. Mr. Dutt has argued that the jurisdiction of this Court under Article 226 is very wide and in exercise of the said jurisdiction writs may even be issued against a non-statutory body. In support of his contention Mr. Dutt has referred to the following decisions :-

In the cases of (2) Queen v. Birmingham and Gloucester Railway Co., 2 W B 47. (3) Queen v. Bristol Dock Company, 2 W B 64 (4) Queen v. Cornatic Railway Co. Limited, 8 Q B 299 (5) H. v. Widdham, (1755 All ER 362 (6) Glosspp v. Reston and Isleworth Local Board, (1874 All ER 836 (7) The Praga Tools Corporation Vs. Shri C.A. Imanuel and Others, (8) B.C. Das Gupta and Another Vs. Bijoyranjan Rakshit and Others, (9) Dr. Harekrushna Mahtab Vs. The Chief Minister of Orissa and Others (10) R,. v. Criminal Injuries Compensation Board. The ex parte Lain 1967 (2) K B 864 : 1967 (2) All ER 770 (11) R. v. Vice-Chancellor of Cambridge University, (1558 All ER (reprint) 232 (12) Harbhajan Singh Vs. State of Punjab and Others, The Engineering Mazdoor Sabha Representing Workmen Employed Under the Hind Cycles Ltd. and Another Vs. The Hind Cycles Ltd., Bombay, (14) Sohanlal Vs. The Union of India (UOI), (15) Prabhakar Ramakrishna Jodh Vs. A.L. Pande and Another, (16) The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others, (17) Vidyodaya University v. Silva, 1964 (3) All ER 865(18) In re : R. v. Pharmaceutical Society, (1854) 2 W R 220.

Mr. Dutt has also referred to the following passage occurring in English and Expire Digest, First Edition, Vol. XVI at page 318 Article No.1303.

To carry out public general statute regulating scientific society to carry out the provision of a public general status by which it is regulated.

10. Mr. Nani Coomar Chakraborty, learned Counsel appearing on behalf of the respondents, has submitted before us that no writ lies against the Managing Committee as the Managing Committee is not a statutory body. He has argued that in view of the decisions of the Supreme Court in D.N. Sanghavi and Sons Vs. Ambalal Tribhuwan Das, . (Also reported in AIR 1964 SC 1980), it is not well-settled that no writ under Article 226 can be issued in a case concerning termination of employment or affecting the service conditions of any employee, unless the case comes within any of the three exceptions recognized in the said

case. It is his argument that in any case between Master and Servant regarding the contract of employment no writ normally lies unless the case falls within any of the three classes of exceptions recognized by the Supreme Court in its decision in Tewari's case. He submits that this position is firmly established. What every may be the nature and jurisdiction of this Court under Article 226 of the Constitution Mr. Chakraborty contends that to attract the jurisdiction of the Court under Article 226 of the Constitution for redress of any grievance against any Managing Committee by a teacher regarding his employment, the case must come within the third exception and the Managing Committee must therefore, be a statutory body and the regulations must also be statutory regulations. Mr. Chakraborty does not dispute that the rules, the violation of which is complained by the petitioner, are statutory rules, but he contends that the Managing Committee is not a statutory body and no writ under Art. 226 can, therefore, be directed to issue against the Managing Committee. Mr. Chakraborty has argued that merely because the Act mentions Managing Committee and the Rules framed under the Act by the State Government lay down that every recognized institution must have a Managing Committee and further make provisions with regard to the composition, powers and functions of the Managing Committee the Managing Committee does not become a statutory body. It is the argument of Mr. Chakraborty that a body of institution may come into existence under the provisions of any particular statute and may have to act in accordance with the provisions thereof, but merely by virtue thereof, the body or institution does not become a statutory body. Mr. Chakraborty points out that a company which is incorporated under the Companies Act and whose functions and powers may be regulated by the provisions of the said Act is not statutory body and the Board of Directors of the company cannot be said to be a statutory body. Mr. Chakraborty comments that similar is the position in the case of a registered society. Mr. Chakraborty contends that to be a statutory body or institution the body or institution itself must be created by the statute and it is not enough that the body or institution comes into existence under the provisions of any statute and that the body or institution has to function on the basis of any provisions contained in the statute. Mr. Chakraborty has referred to the following decisions:-

(19) Dr. S.L. Agarwal Vs. The General Manager, Hindustan Steel Ltd., .

(20) Dr. Z. U. Ahmed v. Hon''ble G. M. Sadiq and Ors., reported in 1968 LIC 1123.

(21) Shri Vidya Ram Misra Vs. Managing Committee, Shri Jai Narain College, and also reported in Shri Vidya Ram Misra Vs. Managing Committee, Shri Jai Narain College, .

11. Mr. Chakraborty has placed particular reliance on the decision of the Supreme Court interest eh case of Shri Vidya Ram Misra Vs. Managing Committee, Shri Jai Narain College, (and also in Shri Vidya Ram Misra Vs. Managing Committee, Shri Jai Narain College,). It is the submission of Mr. Chakraborty that the decision of the Supreme Court in the case of Vidya Ram Mishra concludes the question involved in the instant case.

Mr. Chakraborty has submitted that the decision of the Supreme Court in the case of Prabhakar Ramakrishna Jodh Vs. A.L. Pande and Another, which has been considered and explained by the Supreme Court in the Vidyaram's Mishra case, is not authority for the proposition that a writ lies against a non-statutory body or that the Managing Committee is a statutory body.

12. It is desirable to note the arguments of Mr. Harasit Chakraborty learned Counsel who has appeared as Junior to Mr. Dutt in this matter, and independently in support of the petitioner in an allied case (the case of Manmatha Chandra Chanda v. Managing Committee, Dewanhat High School which involves the same question and which has also been assigned to this Bench Mr. Harasit Chakraborty's main argument has been that the rules framed by the State Government u/s 45 of the West Bengal Board of Secondary Education Act are undoubtedly statutory rules. He contends that the College Code which came up for consideration before the Supreme Court in Vidyaram Mishra's case was not enacted by the State Government but was enacted by the University and the College Code did not, therefore, have the effect and force of any statute or statutory rule. It is his contention that unlike the College Code which was enacted by the University and which was considered by the Supreme Court and unlike the School Code which had also come up, for consideration in order decisions, the rules in the instant case are framed by the State Government under the West Bengal Board of Secondary Act and they are all statutory rules and it is his contention that this feature distinguishes the present case from the other cases. Relying on the provisions contained in Rule 3 which provide that - "Every recognized non-Government institution shall have a Committee to be constituted in the manner and for the purposes hereinafter appearing". Mr. Harasit Chakraborty contends that the Managing Committee is a mandatory requirement of the statute and the Managing Committee, therefore, must be considered to be a creature of the statute. Mr. Harasit Chakraborty further argues that the Managing Committee not only comes into existence by virtue of the mandatory provisions of a statutory rule but the composition, powers and functions of the Managing Committee are also regulated by statutory rules. It is the contention of Mr. Harasit Chakraborty that the Managing Committee which comes into existence on the basis of a mandatory requirement of the statute and which has to act in accordance with the provisions of the statute must be considered to be created under the statute and must, therefore, be considered to be a statutory body. Mr. Harasit Chakraborty has also argued that the Managing Committee in its activities is subject to the control of the Board of the Director of Public Instruction and the exercise of the control by the Board or the Director of Public Instruction also indicates that the Managing Committee is a Committee created by the statute and not under the statute and this position is made clear by the introduction of the words "powers and functions" in section 45(2)(d) by the amendment introduced by the Amending Act of 1969.

13. Mr. Harasit Chakraborty has contended that the Managing Committee of a School must be considered to be a statutory body inasmuch as the said body

comes into existence under the mandatory provisions of the statute and its powers and functions are also regulated by the statutory rules, although the institution itself may not be considered to be statutory body. It is the contention of Mr. Harasit Chakraborty that the members of the Managing Committee do not perform any private duties but perform duties which are clearly public in nature and, therefore, the Managing Committee of an institution which also exists for a public cause cannot be compared to a company or its Board of Directors whose functions and duties are essentially private in nature. It is the contention of Mr. Harasit Chakraborty that the motive of a company is to earn profits for the company and the Directors of the company essentially function with the said motive in view. Mr. Harasit Chakraborty has in this connection relied on the decision of Liak, J. in the case of (22) Madan Mohan Sen Gupta v. State of West Bengal and Ors., reported in AIR 196 Cal 23. He has referred also to the following decisions : (23) Indian metal & Metalurgical Corporation v. Industrial Tribunal Madras and Another, reported in AIR 1935 Mad 98. (24) S.K. Mukherjee Vs. Chemicals and Allied Products, Export Promotion Council, , (25) Mira Chatterjee Vs. Public Service Commission and Others, . (26) In Re: V.S. Shanmuga Mudaliar, . (27) The District Co-operative Bank Ltd. & Another v. Deputy Registrar, Co-operative Societies and Ors., reported in 1973 All 348. Mr. Harasit Chakraborty has submitted that the appointment of a teacher cannot be considered to be a private employment and the teacher because of the provisions contained in the rules enjoy a statutory status and the provisions contained in Rule 28(7) and (8) have been enacted by way of statutory safeguards of the tenure of employment of the teachers. Mr. Harasit Chakraborty has further argued that in the unreported decision of D. Basu, J. in the case of Ajoy Kumar Ghosh, and Ors. v. Members of the Managing Committee, Uttar Jhaporda Sri Sikha Niketan and Ors., (Civil Rule No.204 (W) of 1967) the learned Judge has considered the Managing Committee to be a statutory authority. It is the argument of Mr. Harasit Chakraborty that a statutory authority and a statutory body have really the same meaning. He has submitted that the Managing Committee of a school which comes into existence by virtue of the mandatory provision of the statute and which discharges public duties and whose powers and functions in public interest are regulated by statutory rules, must, in any event, be considered to be a public authority against whom a writ must necessarily lie, if the Managing Committee which is a public authority, acts in violation of the statutory rules regulating its powers. He has in this connection relied on the decision of the Supreme Court in the case of Sirsi Municipality by its in (28) Sirsi Municipality by its President Sirsi Vs. Cecelia Kom Francis Tellis, . Mr. Harasit Chakraborty has further submitted that against the order of the Managing Committee an appeal lies to the Appeal Committee and a writ lies against the order of the Appeal Committee and the writ may have the effect of setting aside or quashing the order of the Managing Committee, and in view thereof the Managing Committee, should be considered to be a statutory body.

14. Miss Sabitri Sen who has appeared to support the view that a rule against

the Managing Committee lies as asked for, has submitted that the institution must be considered to be a public institution and the Managing Committee which comes into existence under the mandatory requirement of the statute to manage the affairs of the public institution in accordance with the provisions contained in the statutory rules must be considered to be a statutory body, and, in any event, a public body or authority against whom a writ will lie for violation of its statutory duties and obligations. In support of her submissions that the institutions is a public body and the Managing Committee which manages or controls the affairs of the public body is also a public authority amenable to the writ jurisdiction of this Court. Miss Sen has relied on the decision of the House of Lords in the case of (29) Griffiths and Anr. v. Smith and Ors., reported in (1941) 1 All ER 66 and has also relied on Articles 1317 and 1318 at page 682 in Halsbury's laws on England (3rd Edition), Vol. 30. Miss Sen has also placed particular reliance on the decisions of the Supreme Court in Sirsi Municipality by its President Sirsi Vs. Cecelia Kom Francis Tellis, . Miss Sen has otherwise adopted the arguments of Mr. Dutt and Mr. Harasit Chakraborty. She has also referred to the decision in the case of (30) Smt. Somavanti and Others Vs. The State of Punjab and Others, on the aspect of a binding effect of a decision.

15. The learned Advocate appearing to support the view of P. K. Banerjee, J. have mainly adopted the arguments of Mr. Nani Coomar Chakraborty and they have submitted that the decision of the Supreme Court in Vidyaram Mishra's case clearly concludes the question. They have submitted that the institutions are not public or statutory bodies and the Managing Committee of these institutions which may come into existence on the basis of statutory provisions and may function in accordance with statutory rules are not statutory bodies or authorities, and as the institutions are not public bodies, the Managing Committees of the institutions cannot also be considered to be public authorities, whatever may be the nature of their duties and powers. Mr. Ashoke Ganguli has further contended that the rules are not statutory rules and even if the rules be considered to be statutory rules, they do not impose any statutory obligations. Mr. Ganguli, has drawn our attention to the provisions considered in sec. 27(3) and (4) of the Act which empower the Board to make regulations in respect of any matter for the proper exercise of the Board's power under the Act and has compared the said provisions which authorize the State Government to make rules for carrying out the purposes of the Act. Relying on the provisions contained in the aforesaid to sub-sections Mr. Ganguli has argued that the provisions contained in section 27(3) and (4) confer the necessary power on the Board to make regulations whereas u/s 45 no such power has been conferred on the State Government and the said provisions contained in sec. 45 merely enables the State Government to frame rules for the purpose of the Act. He contends that it is no purpose of the Act to make any provisions for teachers of schools with regard to their emoluments, status or security. Mr. Ganguli has argued that even if the said rules be considered to be statutory, they are really in the nature of statutory directions and they do not impose any mandatory

obligation on the Managing Committee. He contends that in any event the teachers acquire no legal right by virtue of the provisions regulating the powers and functions of the Managing Committee and as the teachers are governed by the contract of employment and acquire no right under the Act, the teachers are not entitled to invoke the writ jurisdiction of this Court. He has further submitted that the Managing Committee in any event cannot be considered to be a statutory body or a statutory authority as the statute does not set up the Managing Committee and the statute merely makes provisions as to how a Managing Committee is to be appointed and as to how the Managing Committee should exercise its powers and functions. A large number of decisions on the scope of Article 226 the power of the High Court under the said Article and the manner of exercise of the power in appropriate cases, has been cited from the Bar. I have already mentioned some of the decisions which have been cited in the instant Reference before us. The question relates to the power of the High Court and the exercise of thereof under Article 226 in a case affecting the employment of a teacher whether by termination of the employment or otherwise. As the principles relating to the Court's power under Art. 226 and the exercise thereof in any case affecting the right of an employee in the matter of his employment is well-settled. I do not consider it necessary to mention or discuss all the cases which have been cited from the Bar. The effect of issuing a writ in a case affecting employment will be to restore the contract of employment by remedying the breach, if there be any, in contract of service. In other words, the effect will be to enforce specifically the contract of service. If in law the contract of service is not capable of being specifically enforced and the remedy of the aggrieved employee is to be compensated in damages a writ which will have the effect of directing specific performance of the contract of employment cannot be issued under Article 226 of the Constitution. The general rule is that in any case of breach of contract of service, specific performance of the contract of service should not be directed and the remedy of the aggrieved employee is to seek compensation or damage for any wrongful breach of the contract of service whether by termination or otherwise. There are, however, some well-recognised exceptions to this general rule. In the case of *S. K. Tewari v. District Board, Agra*, AIR 1964 SC 1980, the Supreme Court in dealing with a case of termination of a contract of service considered whether a declaration that the contract of service would subsists be made and while considering the said question the Supreme Court formulated the exceptions to the general rule that no declaration that the contract of service, still existed should be given, when there has been a termination of a contract of service I have already quoted the relevant observations of the Supreme Court in the earlier part of the judgment, recording the view of the Supreme Court and the three exceptions formulated to the general rule in the said decisions. The view expressed by the Supreme Court in various other decisions and the aforesaid observations of the Supreme Court in *Tewari's* case were quoted by the Supreme Court in the case of *Shri Vidya Ram Misra Vs. Managing Committee, Shri Jai Narain College*, at page 1453.

16. The settled law, to my mind, is that unless an employee comes within any of the aforesaid three exceptions in the matter of any complaint or grievance relating to the employment, he cannot invoke the jurisdiction of this Court under Article 226 of the Constitution for any writ which will have the effect of specifically enforcing the contract of employment. In the instant case, the teacher concerned cannot be said to be a Government servant who enjoys the protection under the Constitution relating to his employment. The teacher also does not come under the second exception which confers the benefit of the Industrial laws relating to the employment of an employee. The teachers, to be entitled to invoke the writ jurisdiction, has necessarily to come under the third exception.

17. As to mind, the legal position appears to be well-settled. I do not propose to consider the various authorities cited from the Bar. I shall, however, notice the decisions which, in my view, are relevant for considering the question involved in the present case.

18. In the case of Prabhakar Ramakrishna Jodh Vs. A.L. Pande and Another, which has been strongly relied on Mr. Dutt and other learned Advocates supporting him, the facts were briefly as follows : The appellant was a teacher in a college, affiliated to the University of Saugar and managed by the Governing Body established under Clause (3) of "The College Code" which is an Ordinance made under the provisions of the University of Saugar Act. The Principal of the College served the appellant a charge-sheet and asked him to submit his explanation. The appellant denied all the charges and asked for the particulars on which one of the charges was passed. The appellant alleged that this was not supplied and the Governing Body terminated his service without holding any enquiry. Thereafter the appellant moved the High Court for a writ for quashing the order of the Governing Body and for his reinstatement. His case was that the Governing Body had made the order of discharge in violation of the provisions of the "College Code". The High Court rejected the contention of the appellant on the ground that the conditions of service of the appellant were governed not by the "College Code" but by the contract made between the Governing Body and the appellant. The High Court also took the view that provisions of "College Code" were merely conditions prescribed for affiliation of colleges and no legal rights were created by the "College Code" in favour of the teachers of the affiliated Colleges as against the Governing Body. In appeal by special leave to the Supreme Court, the Supreme Court held that the view taken by the High Court was not right and the provisions of Ordinance 20, otherwise called the "College Code" had the force of law.

The Supreme Court further held that the "College Code" conferred, legal rights on the teachers of the affiliated colleges and it was not a correct proposition to say that the "College Code" merely regulated the legal relationship between the affiliated colleges are University. The Supreme Court also held that the provisions of the "College Code" relating to the pay scale of the teachers and their security

of tenure properly fell within the statutory power of affiliation granted to the University under the Act. The Supreme Court referred to the various provisions of the University of Saugar Act, section 32 where of deals with the Ordinance and is to the following effect: -

- (a) The admission of students to the University :
- (b) The course of studies to be laid down for all Degrees and Diplomas of the University :
- (c) The conditions under which students shall be admitted to the Degrees of Diploma course and to the examination of the University and shall be eligible for Degrees and Diplomas :
- (d) The levying of fees for residence and hotels maintained by the University :
- (e) The fees to be charged for the enrolment of students, for attending the courses of teaching in the University, for admission to the examinations, Degrees and Diplomas of the University and for registration of graduates :
- (f) The conditions subject to which persons may be recognized as qualified to give instructions in the University and Colleges :
- (g) The conduct of examinations :
- (h) The term of office duties and conditions of service of officers and teachers of the University in so far as these are, by or under this Act, subject to the Executive Council.

19. Section 6(6) of the Act confers the necessary power on the University to enact Ordinances. After observing that the "College Code" was an Ordinance made under the provisions of sec. 32 of the Act, read with sec. 6(6) of the Act, the Supreme Court, referred to various provisions of the "College Code". Clause 8(vi) of the "College Code" provides as follows: 8(vi). The Governing Body of the Colleges shall not terminate or reduce the pay of any teacher confirmed in the service of the college :-

- (a) Without holding a full enquiry into the matter, the teacher concerned shall be given in writing a statement of charges against him and afforded every opportunity of defending himself. His previous service and character shall also be taken into consideration.
- (b) No decision for such termination of service, or reduction of pay scale shall have any effect unless passed by a majority of two-thirds of the members of the Governing Body.
- (c) At the request of the teacher concerned any difference of dispute either arising out of the contract, or, otherwise, shall be referred to a Tribunal of Arbitration consisting of the Vice-Chancellor and two other persons appointed by the Executive Council of the University one of whom shall possess a status not lower than that of a District Judge. The decision of this Tribunal shall be final and

binding on both parties. Clause 7 of the "College Code" states that all teachers of the colleges shall be appointed on a written contract in the form prescribed in Schedule A except in the case of teachers appointed temporarily for a period of one year or less. Para 9 of this agreement mentioned in the Schedule provides as follows: -

After confirmation, the service of the party of the first part can be terminated only on the following grounds: -

- (a) Willful and persistent neglect of duty.
- (b) Misconduct.
- (c) Breach of any of terms of the contract.
- (d) Physical or mental unfitness.
- (e) Incompetence.
- (f) Abolition of the posts.

Provided firstly, that the plea of incompetence shall not be used against the party of the first part after he has served the party of the second part for 5 years or more.

Provided secondly, the services of the first party shall not be terminated under clause (c) or (f) without the previous approval of Saugar University".

20. The Supreme Court observed at page 718 - "It is not disputed on behalf of the respondents that the "College Code" has been made by the University in exercise of statutory power conferred by section 32 and u/s 6(6) of the Act. It is also conceded on behalf of the respondents that the "College Code" is intra vires the power of the University contained in section 32 read with section 6(6) of the Act. In our opinion, the provisions of Ordinance 20, otherwise called the College Code, have the force of law. It confers legal rights on the teachers of the affiliated colleges and it is not a correct proposition to say that the "College Code" merely regulates the legal relationship between the affiliated colleges and the University alone. We do not agree with the High Court that the provisions of "College Code" constitute power of management. On the contrary, we are of the view that the provisions of the College Code relating to the pay scale of the teachers and their security of tenure properly fall within the statutory power of affiliation granted to the University and under the Act, it is true that Clause 7 of the Ordinance provides that all teachers of affiliated colleges shall be appointed on a written contract in the form prescribed in Schedule A, but this does not mean the teachers have merely a contractual remedy against the Governing Body of the College. On the other hand, we are of opinion that the provisions of Clause 8 of the Ordinance relating to security of the tenure of teachers are part and parcel of the teachers' service conditions, and as we have earlier pointed out, the provisions of the "College Code" in this regard are validly made by the University in exercise of the statutory power and have, therefore, the force and

effect of law, it follows therefore that the "College Code" creates legal rights in favour of teachers of affiliated colleges and the view taken by the High Court is erroneous. It may be noted that in this case a contention was sought to be raised on behalf of the respondents that the Governing Body of the College was not statutory body performing public duties and no Writ in the nature of Mandamus could, therefore, be issued to the Governing Body of the College. The Supreme Court did not allow the said contention to be raised as it was conceded on behalf of the respondents that these objections were not pressed before the High Court. The Supreme Court, therefore, reversed the decision of the High Court and allowed the appeal and remanded the case to the High Court with appropriate directions.

21. In the case of Shri Vidya Ram Misra Vs. Managing Committee, Shri Jai Narain College, the case strongly relied on by Mr. Nani Coomar Chakraborty and the other learned Advocates appearing on behalf of the members of the Managing Committee, the facts were briefly as follows: -

The appellant V. R. Mishra filed a writ petition before the High Court of Allahabad, Lucknow Bench challenging the validity of a resolution passed on 12.11.67 by the Managing Committee of the Jai Narain College, Lucknow, formerly known as Kanyakubja Degree College an associated college, for issue of an appropriate writ or order for quashing the resolution. The learned single Judge of the Allahabad High Court, finding that in terminating the service the Managing Committee acted in violation of principles of natural justice, quashed the resolution and allowed the writ petition. The Managing Committee appealed against the order A Division Bench of the High Court, hearing the appeal found that the relationship between the College and the appellant was that of master and servant and held that even if the appellant had been terminated in breach of the audi alteram partem rule of natural justice, the remedy of the appellant was to file a suit for damages and not to apply under Article 226 of the Constitution for a Writ or Order in the nature of Certiorari. The Division Bench, however, further held that in fact no principle of natural justice was violated by terminating the services of the appellant as the appellant was given an opportunity of submitting his explanation to the charges. The Bench therefore, allowed the appeal, set aside the order of the learned trial Judge and dismissed the writ petition of the appellant. Against the said decision of the Division Bench of the Allahabad High Court a further appeal by special leave was taken to the Supreme Court. Before the Supreme Court Mr. M. C. Setalved, appearing on behalf of the appellant, contended that the appellant had a statutory status, that his services were terminated in violation of the provisions of the statute passed under the Lucknow University Act 1920 and, therefore, the High Court was wrong in its conclusion that no application for Writ or Order in the nature of Certiorari, would lie. Mr. Setalved further contended that the appellant was not given a reasonable opportunity of deciding himself against the charges. The Supreme Court considered various decisions including the decision of the Supreme Court in the case of Prabhakar Rama Krishna Jodh v. A. L. Pandey and Ors. The Supreme

Court held at page 1455 "Besides, in order that the third exception to the general rule that no writ will lie to quash an order terminating a contract of service, albeit, illegally, as stated in *S.R. Tewari Vs. District Board Agra and Another*, might apply, it is necessary that the order must be the order of a statutory body acting in breach of a mandatory obligation imposed by a statute. The College or the Managing Committee in question, is not a statutory body and so the argument of Mr. Setalvad that the case in hand will fail under the third exception cannot be accepted. "In that view of the matter, the Supreme Court held that the High Court was right in its view that the writ petition was incompetent and the Supreme Court dismissed the appeal.

22. It may be noted that Mr. Setalvad in this case had contended before the Supreme Court that since the college in question was affiliated to a statutory body, namely, the University of Lucknow, and was governed by the relevant Statutes and Ordinances framed under the provisions of Lucknow University Act, 1920 and violation of the Statute or the Ordinance in the matter of terminating the services of a teacher would attract the jurisdiction of the High Court under Article 226 of the Constitution, as Statutes and Ordinances had the force of law, and in support of this contention Mr. Setalvad relied on the decision in the case of *Prabhakar Rama Krishna Jodh*. The Supreme Court considered the said decision in the case of *Prabhakar Rama Krishna Jodh* and noted that in the said case the Supreme Court had held that the College Code had the force of law and had not merely regulated the legal relationship between the affiliated colleges and the University but also conferred legal rights on the teachers of the affiliated college. The Supreme Court distinguished the said decision in the case of *Prabhakar Ram Krishna Jodh* and held at pages 1454-55.

In the case in hand the position is entirely different. The relevant statutes governing this case are Statutes 151, 152 and 153, framed under the provisions of the Lucknow University Act, 1920 Statute 151 provides that teachers of an Associated College including the Principal shall be appointed on written contract and that the contract shall, inter alia, provide the conditions mentioned therein in addition to such other conditions not inconsistent with the Act and the statutes as an Associated College may include in its own form of agreement. Then the conditions as regards salary, age of retirement etc. are enumerated. The statute then goes on specify the ground on which a teachers' services can be terminated. Statute 152 states that the form of agreement to be adopted by each college shall be approved by the Executive Council before it is put in force. Statute 153 provides for a fact of agreement which shall serve as a model. It may be noted at statute 151 does not provide for any particular procedure for dismissal or removal of a teacher for being incorporated in the contract". Nor does the model form of contract lay down any particular procedure for that purpose. The appellant had entered into an agreement when he was employed in the College" Clause 5 of the agreement provided that :

The period of probation shall be one year unless extended by the Managing

Committee and the College may at any time during the said period of probation put and end to this engagement, or if service shall continue beyond the said term at any time thereafter, dispense with the services of the said Lecturer without notice, if the Managing Committee of the said College is satisfied that it is necessary to remove the said Lecturer for misconduct, insubordination or habitual neglect of duty on the part of the said Lecturer or in case any of conditions herein specified have been broken by the said Lecturer provided that an opportunity is given to him by the said Managing Committee to give his explanation before the decision is arrived at.

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

Whereas in the case of *Prabhakar Ramkrishna Jodh v. A. L. Pande*, (1965) 2 SC 713, the terms and conditions of service embodied in Clause 8(vi)(a) of the "College Code" had the force of law apart from the contract and conferred rights on the appellant there, here the terms and conditions mentioned in Statute 151 have no efficiency, unless there are incorporated in a contract. Therefore, appellant cannot found a cause of action on any breach of the law but only on the breach of the contract. As already indicated, Statute 151 does not lay down any procedure for removal of a teacher to be incorporated in the contract; so, Clause 5 of the contract can, in no event, have even a statutory flavour and for its breach, the appellant's remedy lay elsewhere.

23. It is interesting to note that replying on the decision in the case of *Prabhakar Rama Krishna Jodh*, Mr. Setalved in this case raised a contention that the Supreme Court had sub silentio sanctioned the issue of a writ under Article 226 to quash an order terminating the services of a teacher passed by a College similar statute in *Prabhakar Ram Krishna Jodh*'s case and, therefore, the fact that the College or Managing Committee was not a statutory body was no hindrance to the High Court issuing a suit prayed for by the appellant. The Supreme Court has repelled this contention and has observed that his contention has no merit as this Court expressly stated in the judgment that no such contention was raised in the High Court and so it cannot be allowed to be raised in this Court.

24. In the case of *Sirsi Municipality by its President Sirsi Vs. Cecelia Kom Francis Tellis*, , the Supreme Court has occasion to consider the dismissal by the Municipality of an employee without reasonable opportunity for defence hearing and the Supreme Court held that the dismissal was void and the employee was entitled to a declaration that the dismissal was void and of no effect. The appeal,

of course arose out of a suit filed by the Respondent employee against the Municipality for a declaration that the resolution of the Municipality dismissing the employee was illegal and that the status of the Respondent as midwife in the Hospital remained unaffected and that the Respondent remained an employee of the Municipality as before. The Supreme Court in this case referred to many of its earlier decisions on this aspect and the Supreme Court also noted the decision in the case of *S.R. Tewari Vs. District Board Agra and Another*, . After referring to the various decisions the Supreme Court observed at page 859, "These decisions include that statutory provisions may limit the power of dismissal. Where such limitation is disregarded a dismissal may be held invalid. In this respect employment under statutory bodies differs from ordinary private employment. Where a public body is empowered to terminate employment on specified grounds of where a public body does not observe the procedure laid down by legislation e.g., improperly delegates power of dismissal to another body the Courts have declared such dismissal from public employment to be invalid.

The case of statutory status of an employee can also from the subject-matter of protection of the rights of an employee under the statute. The Supreme Court held at page 860, "In the present appeal, the preliminary question is whether the dismissal is in violation of Rule 143. Rule 143 imposes a mandatory obligation. The rules were made in exercise of powers conferred on the Municipality by statute. The rules were binding on the Municipality. They cannot be amended without the assent of the State Government. The dismissal of the Respondent was rightly found by the High Court to be in violation of Rule 143 which imposed a mandatory obligation. The Respondent was dismissed without a reasonable opportunity of being heard in her defence. The dismissal by the Municipality was without recording any written statement which might have been tendered. The dismissal was *ultra vires*." The Supreme Court dismissed the appeal and upheld the decree of the trial Court which had the effect of specifically enforcing the respondent's employment with the Municipality. The view expressed by Beg J. who delivered a separate concurring judgment may be noted. The learned Judge observed at page 861, "It is true that ordinarily, a Court will not give a declaration which will have the effect of enforcing a contract of personal service and will restrict relief to the injured party to damages for breach contract. But, the principles which are applicable to the relation of a private master and the servant, unregulated by statute, could not apply similarly to the case of a public statutory body exercising powers of punishment fettered or limited by statute and relevant rules of procedure".

Although *Indian Airlines Corporation Vs. Sukhdeo Rai*, which was cited on behalf of the appellant, could perhaps be distinguished on facts, I am unable to reconcile to the decision of this Court in the case in (*Executive Committee, U.P. Warehousing Corporation Vs. Chandra Kiran Tyagi*, with our view in the case before us. In Tyagi's case as in the case before us, no express statutory revision was contravened by the impugned dismissal, but a rule made under powers conferred by statute, which protects the servant concerned from punishment by

way of dismissal contrary to rules of natural justice, was violated, if a guaranteed statutory status means only an express statutory protection such as the one found Article 311 of the Constitution, and a rule made under a statutory power is not enough to confer it, there was none either in Tyagi's case or in the case before us. An express statutory provision or guarantee is not the only basis of a mandatory duty or obligation. It can be imposed either by a rule made in exercise of a statutory power or it may arise by implication when exercising a quasi-judicial function. "The learned Judge referred to the following observations of the Supreme Court in the case of (31) State of Orissa Vs. Dr. (Miss) Binapani Dei and Others, ". The rule that a party on whose prejudice and order is intended to be passed is entitled to hearing applies alike to Judicial Tribunals and bodies and persons invested with the authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of four constitutional set up that every citizen is protected against exercise of statutory authority by the State or its Officers. Duty to act judicially would, therefore, arise, from the very nature of the function intended to be performed. It need not be shown to be superadded. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case. After referring to the aforesaid observations the learned Judge held this principle would be equally applicable to local Government Bodies which fall within the definition of State given in Article 12 of the Constitution.

25. It has to be noticed that in the case of Vidya Ram Mishra v. The Managing Committee, Sri Jai Narain College and Another which I have earlier considered, the Supreme Court held that neither the College nor its Managing Committee was a statutory body and, therefore the third exception to the general rule laid down in the case of Sri S. R. Tewari v. District Board, Agra, AIR 1964 AC 1689 was not attracted and consequently no writ would lie. This decision of the Supreme Court has been sought to be distinguished by Mr. Dutt and Mr. Harasit Chakraborty appearing on behalf of the teachers on the ground that the relevant statutes were not framed by the State Government but were framed by the Lucknow University itself under the provisions of the Lucknow University Act, 1920 and therefore, they did not have the force of law. In my opinion this argument cannot be accepted and this distinction does not have any basis. In the case of Prabhakar Ramakrishna Jodh Vs. A.L. Pande and Another, which I have earlier discussed, Ordinance 20, otherwise called the "College Code", was also enacted by the University under the powers conferred on the University u/s 32, read with section 6(6) of the University of Saugar Act, 1946, and not by any State or Central Government. In the case of Prabhakar Ramakrishna Jodh, the Supreme Court has held that the provisions of Ordinance 20, otherwise called the "College Code", though enacted by the University concerned, has the force of laws. It must, therefore be held that in the case of Vidya Ram Mishra statutes

enacted by the University by virtue of the power conferred on it by the Lucknow University Act, 1920 should also have the force of law. It follows that although the relevant provisions contained in the Ordinance or Statutes or Rules may have the force of law, the Institution or its Managing Committee does not become a statutory body. It may be noted that in the case of Prabhakar Ramkrishna Jodh the question whether the Governing Body of the College was a statutory body or not was not decided and the Supreme Court did not allow the contention that the Governing Body of the College was not a statutory body, to be urged. It is interesting to note in the case of Vidya Ram Mishra Mr. Setalved could not even advance an argument that the Governing Body of the College affiliated to the Saugar University under the University of Saugar Act, 1946 in the case of Prabhakar Ramkrishna Jodh was a statutory body as the provisions contained in Ordinance 20 otherwise called the "College Code" enacted by the University had the force of law, and the Managing Committee of the College in 1974 (2) S R R 443 question in the case of Vidya Ram Mishra should also therefore be considered to be a statutory body. His argument indeed proceeded on the basis that the Governing Body of the College in the case of Prabhakar Ram Krishna Jodh was not a statutory body and his contention was that the Supreme Court had sub silentio sanctioned the issue of a writ under Article 226 of the Constitution of India to quash an order terminating the services of a teacher passed by a college similarly situate in Prabhakar Ram Krishna Jodh's case and, therefore the fact that the college or the Managing Committee was not statutory body was no hindrance to the High Court issuing the writ as prayed for. The Supreme Court as I have earlier noticed, rejected this contention and observed that this argument had no merit as the Supreme Court in the case of Prabhakar Ram Krishna Jodh had expressly stated in the judgment that no such contention was raised in the High Court and so it could not be allowed to be raised in the Supreme Court. The decision of the Supreme Court in Vidya Ram Mishra's case to my mind, therefore, clearly lays down that even if the Ordinance or Statutes, or Rules, whether enacted by the University or by the State Government, under power and authority conferred on the appropriate body by the relevant Act, have the force of law, the College or the Managing Committee does not become a statutory body. The decision of the Supreme Court in the case of Vidya Ram Mishra, in my opinion, concludes the question involved in the present proceeding and on the authority of the said decision. I must hold that even if the rules framed by the State Government have the force of law and the Managing Committee which is mentioned in the Act in question, namely, the West Bengal Board of Secondary Education Act, 1963 and whose composition, powers and functions are regulated by the rules framed by the State Government under the authority of the said Act, does not become a statutory body. The Managing Committee may have been mentioned and defined in the West Bengal Board of Secondary Education Act and it may have come into existence by virtue of the requirements of the provisions contained in the rules framed by the State Government under the said Act. But the particular Managing Committee of any institution is not created by the Act and it cannot be said that any particular

Managing Committee of a school is the creature of the statute. A body may come into existence on the basis of the provisions contained in any statute and may even be required to function in accordance with the provisions of the statute but the body does not thereby become a statutory body unless the body is created by the statute and statute itself brings the body into existence. A very common example is the example of a company which is incorporated under the Companies Act and which has to function in accordance with the provisions contained in the Companies Act but thereby a company, so incorporated under the Companies Act and so required to function in accordance with the provisions thereof does not become a statutory body and its Board of Directors cannot be considered to be a statutory body. It does not appear that D. Basu, J. in his unreported decision in the case of Ajoy Kumar Ghosh & Ors. v. Members of the Managing Committee, Uttar Jhaparda Sree Sinha Niketan, Civil Rule No. 204(W) of 1967 considered this aspect, while observing in his judgment that the Managing Committee of the school was the statutory authority to discharge the teachers and in any event, the Managing Committee cannot be considered to be a statutory body, in view of the decision of the Supreme Court in Vidya Ram Mishra's case.

26. In the instant case concerning the employment of public school I am of the opinion, that there is no element of public employment and there is nothing in the nature of an office or status which is capable of protection. It has to be noticed that there is no provision in the West Bengal Board of Secondary Education Act, 1963 which confers any kind of status on the teachers. The decisions of the House of Lords in the case of Griffiths and Another v. Smith and Ors., (1941) 1 All ER 66 and the passage in Halsbury's Laws of England (3rd Edition) contained in Article 1317 and 1318 at page 682 of Volume 30 are of no assistance. The said decision was based on the particular provisions of the Public Authorities Protection Act, 1893.

27. In the case of Prabhakar Ramakrishna Jodh Vs. A.L. Pande and Another, , Section 32 of the University of Saugar Act, 1946, specially provided in sub-section (h) of the said section as noted by the Supreme Court at page 715. "32(h) subject to the provisions of this Act the statutes and in addition to all matters which, by this Act or the statutes, are to be provided for by the ordinance, the ordinance provides for all or any of the following matters namely the term of office, duties and conditions of service of officers and teachers of the University is so far as these are, by or under this Act, subject to the Executive Council". There is no such provision in the West Bengal Board of Secondary Education Act and indeed there does not appear to be any provisions in the Act with regard to the status or service conditions of the teachers. Section 45 of the Act which empowers the State Government to make appropriate rules for carrying out the purposes of this Act mentions various matters in the various clauses in sub-section (2) of the said section but makes no mention as to the status, conditions of service or the employment of the teachers. It therefore, appear that it was no purpose of the Act to make any provisions regarding

emoluments, status on service conditions of the teachers. In Rule 28 framed by the State Government, the State Government while dealing with the powers of the Managing Committee has laid down the procedure the Managing Committee should follow in the exercise of its powers with regard to the appointment, removal of teachers and other employees of the School, as such powers of appointment or removal of teachers or other employees of the School have been conferred on the Managing Committee. It is of interest to note that the teachers and other employees of the School have been placed on the same footing in this Rule, and though for the purpose of the exercise, of the powers by the Managing Committee under Rule 28 teachers and other employees have been treated alike, right has been conferred only on the teachers to appeal to the Appeal Committee against any decision of the Managing Committee and necessary power has been conferred on the Appeal Committee under the Appeal Regulations made by the West Bengal Board of Secondary Education Act under sub-section (3) of section 27 read with sub-section (3) of section 22 of the West Bengal Board of Secondary Education Act, 1963 with approval of the State Government and by Clause (9) of the said Regulations appropriate power has been conferred on the Appeal Committee including the power to direct reinstatement of a dismissed teacher. The power including the power of reinstatement conferred on the Appeal Committee have been specially conferred only on the Appeal Committee in dealings with cases of teachers only and the Appeal Committee alone enjoys such powers. The special powers conferred on the Appeal Committee do not in my opinion create any status for the teachers. The other employees of the school who are also mentioned while dealing with the powers of the Managing Committee in Rule 28, do not enjoy any such right of appealing to the Appeal Committee. In my opinion, provisions made in Rule 28 of the Rules framed by the State Government while dealing with the powers of the Managing Committee and the procedures to be followed in the exercise of its powers under the Rules do not confer any status on the teachers or the other employees of the school. The said provisions contained in Rule 28 are, in my opinion, intended to deal with the powers of the Managing Committee and the exercise thereof and are not intended to confer any status on the teachers or the employees of the school. The employees mentioned in the said Rule 28 must necessarily include all the employees other than the teachers who are specially mentioned in the said Rule and must necessarily include also the ordinary staff of the school. I fail to understand why the authority will seek to prefer the employees of a School to the employees of Colleges and other institutions and will seek to confer on them any special status. It may also be noted that in Rule 28(7) while dealing with the powers of the Managing Committee and the exercise thereof it has been specifically provided that in all cases of appointment, both permanent and temporary, the Committee shall issue letters of appointment specifying the terms and conditions of such appointment. The employment is therefore governed by the contract of service contained in the letter of appointment, subject to the statutory power reserved only to the Appeal Committee in case of teachers to direct reinstatement. I may observe that in the case of *Vidya Ram Mishra v. Shri*

Jai Narain College and Another, AIR 1972 SC 1451, the Supreme Court held at page 1453 "whether the decision in (1964) 3 All ER 865 is correct or not, in this case, we think there was no element of public employment, nothing in the nature of an office or status which is capable of protection.

28. On the authority of the aforesaid view expressed by the Supreme Court and also for reasons hereinbefore stated, it must, therefore be held that there is no element of public employment in the employment of the teacher of a school and there is nothing in the nature of an office or status which is capable of protection. The school cannot be considered to be a public statutory body and its Managing Committee is also not a statutory body. The decision of the Supreme Court in the case of Sirsi Municipality's case, which I have considered earlier, is of no assistance in the instant case. An appeal from the decision of the Managing Committee may lie to the Appeal Committee and even assuming that a writ may lie against the Appeal Committee on the basis that the Appeal Committee is a statutory body with the possible effect that the order of the Managing Committee may be set aside, the Managing Committee does not necessarily thereby become a statutory body. Undoubtedly, the Board of Secondary Education is a statutory body and a writ in appropriate cases may issue against the Board. The school which if affiliated to the Board does not thereby become a statutory body.

29. I must, therefore, hold that the teacher does not come within the third exception to the general Rule enunciated in Tewari's case and a writ under Article 226 will not lie against the Managing Committee of the school on any complaint by the teacher effecting his employment. I am, therefore, of the opinion, that P. K. Banerjee, J. was right in his conclusion that a writ against the Managing Committee will not lie. I direct that this matter will now go back to the learned trial Judge for final disposal and I further direct that in respect of the proceeding before us, parties will pay and bear their own costs.

The order will also govern three other matters C. R. No.977 (W) of 1967, C. R. No. 7893 (W) of 1968 and C. R. No. (W) of 1969 which have been heard along with the present matter.

Hazra, J.

30. I agree.