

(1988) 05 PAT CK 0009

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 5340, 5829 of 1987

Chandra Nath Thakur

APPELLANT

Vs

Bihar Sanskrit Shiksha Board and Others
 Managing
Committee Shri Bhagirat Madhyamik Sanskrit Vidyalaya and
Another Vs The State of Bihar and Others

RESPONDENT

Date of Decision : 25-05-1988

Acts Referred:

Bihar Sanskrit Shiksha Education Board Act, 1981 — Section 44

Citation : (1988) PLJR 866

Hon'ble Judges : S.B. Sinha, J

Bench : Single Bench

Advocate : Dharendra Kr. Jha, CWJC 5340/87, Dr. Sadanand Jha, H.C. Mishra and Asim Jha, CWJC 5340/87, for the Appellant; Sadanand Jha and H.C. Mishra, for Respondent No. 4, Dinesh Chandra and Amaresh Kumar Lal, Rajendra Singh, Dharendra Kumar Jha, for Respondent No. 4, Dinesh Charan, Amaresh Kumar Lal and Subhash Kishore Verma, Ramanandan Prasad, Standing Counsel IV, for State, CWJC 5829/87, for the Respondent

Judgement

S.B. Sinha, J.—These two writ applications were taken up for hearing together and are being disposed of by this common judgment. The facts of the case lie in a very narrow compass.

2. In village Chainpur situated in the district of Saharsa, there exists a Sanskrit School known as Shri Bhagirat Sanskrit Vidyalaya. The school was established on the 2nd January, 1941 as a Sanskrit Tol. By reason of an administrative circular, the Bihar Sanskrit Shiksha Parishad was established. The Education Department of the State of Bihar issued a notification dated the 20th November, 1976, purporting to lay down condition of service relating to teachers and non-teaching staff employed in the Non-Government Sanskrit High Schools, in the State of Bihar. The said purported rules are known as the Bihar State Non-Government Sanskrit High School (Conditions of Service) Rules, 1976. At this stage, it is necessary to mention that the said rules were not issued by the State of Bihar in

terms of provisions of any statute.

However, by Act VI of 1960, the legislature enacted Kameshwar Singh Darbhanga Sanskrit University Act. In terms of section 44 of the said Act, the Bihar Sanskrit Association was dissolved and its power and duties relating to toll were to be exercised by the aforementioned University. The tolls which came within the purview of the aforementioned Act were to be recognised by the State of Bihar.

3. In or about the year 1978, the petitioner of C.W.J.C. No. 5340 of 1987 (Chandra Nath Thakur) was appointed as a teacher of the aforementioned school. With effect from the 1st April, 1980, the school was recognised. The said school became an inter-college one and was recognised by the aforementioned University. On or about the 22nd August, 1981 the said school was recognised by the State of Bihar as a private Sanskrit High School and not as a Government School.

4. Against Shri Thakur, a police case bearing No. 043 was instituted on the 11th November, 1983, and a non-bailable warrant of arrest was issued against him. The Managing Committee of the aforementioned school has alleged in C.W.J.C. No. 5829 that besides the aforementioned case, various other cases were also pending against Shri Thakur and in these cases also warrants of arrest were issued against him. The Managing Committee of the said school in its meeting held on the 19th July, 1984, adopted a resolution placing Shri Thakur under suspension and also initiated a departmental proceeding against him. On the 21st July, 1984, Shri Thakur was asked to show cause but no show cause was filed by Shri Thakur within the period prescribed therefor in the notice whereafter in a meeting held on the 4th August, 1984, the Managing Committee resolved to give one more chance to Shri Thakur to show cause. In the said resolution, it was decided that two additional charges would be framed against Shri Thakur and the same communicated to him.

5. In the meanwhile, it is pertinent to mention that the Governor of Bihar in exercise of his powers conferred upon him u/s 213(1) of the Constitution of India has promulgated various Ordinances known as Bihar Shiksha Education Board Ordinance, 1980. The Legislature of Bihar thereafter enacted Bihar Sanskrit Shiksha Education Board Act, 1981 (Bihar Act XXXI of 1982) which came into force with effect from the 24th January, 1982 (hereinafter referred to for the sake of brevity as the "said Act"). The Bihar Sanskrit Shiksha Board which was initially constituted under the provisions of aforementioned Bihar Sanskrit Shiksha Education Ordinance, 1980, by an order dated the 8th September, 1984, sought to dissolve the Managing Committee of the aforementioned school and constituted an ad hoc committee in relation thereto. On the same day, i.e., on the 8th September, 1984, the Chairman of the Board set aside the order of suspension of Shri Thakur which was passed against him in the manner as stated hereinafter.

6. On the 20th September, 1984, the Managing Committee of the said school filed a writ petition in this Court challenging the aforementioned order dated the 8th September, 1984, passed by the Bihar Sanskrit Shiksha Board whereby and whereunder it dissolved the said managing committee and further constituted an ad hoc committee for managing the affairs of the aforementioned school. The said writ petition was marked as C.W.J.C. No. 5440 of 1984 wherein by an order dated the 8th November, 1984, this Court stayed the operation of the aforementioned order dated the 8th September 1984, and thus, allowed the old Managing Committee to continue to function.

7. The petitioners of C.W.J.C. No. 5829 of 1987 have alleged that the aforementioned interim order dated the 8th November, 1984, was violated by the Board, as a result whereof an application for initiating a proceeding under the Contempt of Courts Act was filed being M.J.C. No. 112 of 1985 and after the filing of the application the ad hoc committee constituted by the Board was dissolved finally. By an order dated the 26th September, 1985, the Managing Committee of the School in question terminated the services of Shri Thakur which is contained in Annexure-4 to C.W.J.C. No. 5829 of 1987.

8. From the pleadings, it appears that the aforementioned order terminating the services of Shri Thakur was communicated to him by a registered post and he received the same. This allegation made in the writ petition has not been controverted by the respondent No. 4 and, as such, the same should be accepted as correct. Despite the knowledge about the order terminating his services Shri Thakur filed an application before the Chairman of the Board on the 2nd November, 1985, for payment of his salary and the Chairman of the Board directed the Managing Committee to submit its explanation. In between the 17th March, 1986, and the 2nd April, 1987, the Managing Committee appeared before the Chairman of the Board and submitted various documents. The 15th April, 1987, was the date fixed for final hearing of the aforementioned case but the same was not on list. According to the petitioner of C.W.J.C. No. 5829 of 1987, the Chairman of the Board heard the matter ex parte behind their back on the 16th April, 1987, and passed the order dated the 5th August, 1987, directing the Managing Committee to pay salary to Shri Thakur. On the 22nd September, 1987, the Managing Committee of the school sent a lawyer's notice to the Board. By an order dated the 24th November, 1987, the Secretary of the Board directed the Managing Committee to send the salary bill of Shri Thakur within a week. C.W.J.C. No. 5829 of 1987 has, therefore, been filed on behalf of the Managing Committee of the aforementioned school challenging, inter alia, the aforementioned decision of the Board whereby and whereunder it was directed to continue to pay salary to Shri Thakur.

C.W.J.C. No. 5340 of 1987, on the other hand, has been filed by Shri Thakur for issuance of an appropriate writ directing the Board to enforce its order. These basic facts are not disputed.

9. Dr. Sadanand Jha, learned counsel appearing for the petitioner in C.W.J.C. No.

5829 of 1987 has raised various questions of law. The learned counsel firstly submitted that the Board has no power in terms of section 6 of the said Act to direct payment of salary to a particular teacher and that too in respect of an employee who has been dismissed by the Managing Committee. The learned counsel further submitted that Shri Thakur being an employee of the school in question the Managing Committee had the jurisdiction to terminate his services and in that view of the matter by directing payment of salary to Shri Thakur, the Board has sought to do indirectly which it could not do directly. It has further been pointed out by Dr. Jha that in any event the Chairman alone could not have exercised the power of the Board nor could pass the order behind the back of the petitioner. The petitioners have also alleged mala fide as against the Chairman.

10. Mr Dinesh Sharan, learned counsel appealing on behalf of the Bihar Sanskrit Shiksha Board, and Mr. Rajendra Prasad Singh, learned counsel appearing on behalf of Shri Thakur, on the other hand, submitted that the Board had wide power to control and supervise the Sanskrit Schools and, as such, they can exercise even the disciplinary powers in respect of teaching and non-teaching staff employed in a Sanskrit School. They have further submitted that, in view of the fact that the appointment of teacher is to be approved by the Board, by necessary and logical corollary, the Board must be held to have the power to grant approval in relation to an order of the Managing Committee terminating the services of a teaching and non-teaching staff which in turn must mean that it has also the power to set aside the order of termination passed by the Managing Committee.

11. Mr. Rajendra Prasad Singh further submitted that, in any event, as the order passed by the Managing Committee terminating the services of the petitioner was held illegal and without jurisdiction, and even if the order of the Board is set aside, in such an event, this Court also should set aside the order of termination passed by the Managing Committee as the said order was also illegal.

12. Before advertng to the rival contentions raised on behalf of the learned counsel for the parties aforementioned the legislative history relating to the management and control of the Sanskrit education in the State of Bihar may be noticed. The said history is contained in the counter-affidavit filed on behalf of the Sanskrit Shiksha Board in C.W.J.C. No. 5829 of 1987 and which has been accepted by all the parties concerned as being the correct position in relation thereto.

13. Prior to 1960, there was no Act with regard to Sanskrit education in the State of Bihar. In the Bihar Education Code in the Chapter VIII certain provisions were made for imparting Sanskrit education in this State. There were two kinds of recognised Sanskrit institutions:--

(1) Sanskrit Vidyalaya or tols which prepared candidates for Prathma, Madhyama and Acharya examinations.

(2) Primary Sanskrit Schools which taught Sanskrit in addition to the

departmental vernacular curriculum up to a lower primary or upper primary standard.

14. The control of these Vidyalayas was exercised through the Bihar Sanskrit Association, which conducted their examination. This Association consisted of two parts, the Sanskrit Parishad and the Sanskrit Council, each body having same President and Secretary. The Parishad was a larger body consisting of 55 members and the Council was a smaller one consisting of 16 members only. The functions of the Council amongst others were (i) to conduct examinations, (ii) to issue titles and certificates, (iii) to advise Government in regard to (a) the course of study for various Sanskrit examinations and in various classes of Sanskrit institutions; (b) the Rules to be framed for Sanskrit Examinations, (c) matters affecting Sanskrit Education generally and (d) to recognise and to propose for the approval of Government rules regulating their recognition and many other matters which are not relevant.

15. The Kameshwar Singh Darbhanga Sanskrit University Act (VI) of 1960 came into force on the 18th March, 1960. This Act defined Bihar Sanskrit Association in Section 2(d) as the Sanskrit Association, constituted by the State Government for exercising control and superintendence over institutions other than those imparting instruction in Sanskrit upto the Madhyama standard. By this Act, the University was given the power to give degrees and to hold examinations. Further the University was given the power of affiliation of Sanskrit institutions, but it was not given the power of recognition of the same.

16. u/s 44 of the Act, the Bihar Sanskrit Association was dissolved and its power and duties were to be exercised and performed by the University or the Board of Sanskrit Education, as the case may be, in such manner as the State Government, may by order in writing direct in this behalf.

17. Thereafter, the Bihar Sanskrit Siksha Board was constituted vide State Government Resolution No. 322 dated 24.1.1961. This Board was also known as Bihar Sanskrit Siksha Parishad and it controlled Sanskrit Education upto Madhyama standard. But the examinations were conducted by the University.

18. By Kameshwar Singh Darbhanga Vishwa Vidyalaya Act of 1962 (Act 21 of 1965 the earlier Act of 1960 was repealed. This Act also defined the Bihar Sanskrit Association and the Board of Sanskrit Education (Sanskrit Shiksha Parishad) in the same terms as defined in the earlier Act. By this Act also the University was not given the power of recognition of Sanskrit institutions. From section 43 of this Act it appears that the power of recognition of Sanskrit institutions formerly lay with the Bihar Sanskrit Association and thereafter the same was transferred to the Board of Sanskrit Education.

19. The Bihar State Universities Act being Act No. 23 of 1976 came into effect from the 31st December, 1976. This Act has repealed the earlier Act of 1965 and has confined the jurisdiction of the Sanskrit University to colleges imparting educations above Madhyama standard.

20. As mentioned hereinbefore, thereafter the Government of Bihar promulgated several Ordinances in the year 1980 and 1981 culminating in enactment of the Bihar Sanskrit Shiksha Board Act 1981 (Bihar Act XXXI of 1982) which came into effect from 24.1.1982, Pursuant to the provisions of the Bihar Sanskrit Shiksha Board 2nd Ordinance of 1981, the present Bihar Sanskrit Shiksha Board was constituted on the 28th May, 1981.

21. At this juncture, it may also be mentioned that a Division Bench of this Court in Kashi Prasad Sharma and others, vs. State of Bihar (C.W.J.C. No. 2084 of 1982) by a judgment dated the 10th August, 1987, held that the Bihar State Non-Government Sanskrit High School Conditions of Service Rules, 1976 did not have the statutory force nor the said rules can be said to be the rules framed under the said Act.

22. It has been admitted by all concerned that no rule has yet been framed under the Bihar Act XXXI of 1982 nor any rule was framed under any of the Ordinances which were promulgated prior thereto. The English version of the Bihar Act XXXI of 1982 is not available. However, the learned counsel for the parties drew my attention to the Bihar Ordinance No. 144 of 1980 namely the Bihar Sanskrit Education Board Third Ordinance, 1980, the English version whereof is available. As the provisions of the Act and the said Ordinance are absolutely identical, I prefer to refer to the aforementioned ordinance for the purpose of considering the intent and purport of the provisions of the Act. The said Act was enacted in order to provide for the constitution of an autonomous Board for development and better supervision of Sanskrit education upto Madhyama standard in the State of Bihar. Section 6 of the said Act reads as follows:--

(1) It shall be the duty of the Board to advise the State Government on all matters relating to Sanskrit education upto Madhyama standard.

(2) Subject to the provision of this Ordinance and the regulations and rules made thereunder, the Board shall have the power to direct, supervise and control Sanskrit Education upto Madhyama Standard in the State and in particular the following power.

(a) To grant recognition to Sanskrit School Tols up to Madhyama standard with the prior approval and within the number fixed by the State Government, in accordance with such regulations may be made in this behalf;

(b) To withdraw such recognition in accordance with such rules as may be made in this behalf;

(c) To maintain a register of recognised Sanskrit Schools and Tols;

(d) To provide by regulation the syllabi, the courses of studies and the books to be studied in recognised Sanskrit Schools and Tols for examinations instituted by the Board upto Madhyama Standard;

- (e) To undertake, if necessary, with the prior approval of the State Government, the preparation, publication or sale of text-books and other books for use in Sanskrit Schools and Tols;
- (f) To maintain and publish from time to time list of books approved for use in Sanskrit Schools and Tols for examinations instituted by the Board and to remove the name of any such book from any such list;
- (g) To institute and conduct different Sanskrit examinations up to Madhyama standard and such other examinations as it may think fit and make regulations in this behalf;
- (h) To publish results of the examination instituted by the Board and to award certificates, prizes and scholarships in this behalf;
- (i) To provide by regulation the rates of remuneration to be paid to the paper setters, moderators, examiners, invigilators, Centre Superintendent, Supervisors and others employed in connection with the examination instituted by the Board and the fees to be paid by candidates for such examinations;
- (j) To grant permission to candidate to appear at an examination up to Madhyama Standard instituted by the Board and to refuse or withdraw such permission in accordance with such regulations as may be made in this behalf;
- (k) To administer the Sanskrit Education Fund;
- (l) To institute and administer such provident funds as may be prescribed;
- (m) To prepare regulations regarding service conditions of the employees of the Board;
- (n) Subject to the provisions of the rules made under this Ordinance to constitute and dissolve the managing committees of the Sanskrit Schools and Tols; and
- (o) To perform such other functions as may be entrusted to it by the State Government.

23. u/s 13 of the said Act, a fund has been created known as Sanskrit Shiksha Nidhi which is terms of section 14(ka) thereof, this has to be utilised for payment of salary to Sanskrit teachers and other allowances to teaching and non-teaching staff of the recognised schools. In terms of clause (Anga) of this section, the Board has to make payment of contribution towards pension, gratuity and provident fund of the teachers and other employees of recognised Sanskrit schools. Section 20 of the said Act provides that services of teaching and non-teaching staff of recognised Sanskrit schools and Tols shall be taken under the Board with effect from the date notified by the State Government in the official gazette and the teachers and non-teaching staff shall be treated to be under the service of the Board from that date, and their services shall also be treated to be under the Board.

In terms of the aforementioned provisions, in the event such notification is published in the official gazette, the services of such persons shall be controlled by the Board in terms of the rules which may be framed in that regard. However, it may be mentioned at this juncture that no such notification has yet been issued by the State of Bihar.

24. In terms of section 21 of the said Act, the State Government shall arrange to make appointment and promotion of teachers by notification made in the official gazette and prescribe rules and procedure therefor. In terms of section 22(2)(Ta) of the said Act, the State Government has been given the power to make rules regarding the service conditions and appointment of teachers and other staff of recognised Sanskrit schools and tols. As mentioned hereinbefore, no rule has been framed by the State of Bihar as yet in terms of section 22 of the aforementioned Act.

By virtue of the provisions of section 25 of the Act, with effect from the date, the Board is established u/s 3, and the Bihar Sanskrit Shiksha Parishad constituted under Government notification No. 322 dated 24.1.1961 has been dissolved thereby. However, section 25(4) of the said Act provides that all tols and schools which were recognised by the said Parishad shall also be deemed to be recognised under the said Act, until the expiration of the period of recognition subject however to the power of the Board to withdraw recognition in accordance with the provisions of the said Act.

25. Learned counsel appearing on behalf of the respondents in C.W.J.C. No. 5829 of 1987 contended that from a bare reading of the different provisions of the Act as also the history relating to the constitution of the Parishad and the Board, it is clear that the matter relating to recognition of Sanskrit Schools and tols were previously with the Bihar Sanskrit Shiksha Board which was directly under the Education Department and not the said power has been conferred on the Board in terms of the provisions of the said Act. It has further been contended that all Sanskrit schools upto Madhyama standard are under the complete control and supervision of the Board and, as such, the Board has every right to see that the proper and duly qualified persons are employed and/or continued to be employees in the said institution and are getting their salaries. It has further been submitted that in such a situation it must be held that the Board has the duty to see that such teachers are not unnecessarily harassed or their services are not dispensed with. It is also the duty of the Board, according to the learned counsel, to see that undesirable and undeserving persons did not serve such institution and only in this capacity the Board has directed payment of salary to Shri Thakur as it has the power to approve and by necessary implication also to disapprove orders of appointment and dismissal of teaching and non-teaching staff of the said school.

26. Learned counsel for Shri Thakur has submitted that, at the relevant point of time, when the services of Shri Thakur was dispensed with, there was no Managing Committee functioning in respect of the school in question according to

law. According to the learned counsel, the Managing Committee as defined in section 2 (Gha) of the Act means such Committee constituted under the provisions of the Act for the management of the tols and non-government schools upto Madhyama standard. According to the learned counsel, as the managing Committee in question was not constituted in terms of the provisions of the Act, in such an event, it must be held that no Managing Committee had been illegally acting and, in this view of the matter, the order of termination passed by the Managing Committee on the 26th September, 1985, as contained in Annexure 4 must be hold to be invalid.

Reference in this connection has been made to an unreported decision in Kashi Prasad's case as also a decision of the Supreme Court in the case of Sri Dwarka Nath Tewari and Others Vs. State of Bihar and Others .

27. It has further been submitted that in the event the order of termination passed by the Managing Committee was wholly without jurisdiction as the said Committee had the power to inflict punishment only by reason of the provisions of the 1976 rules and, as the said rules have been held to have no statutory force, in such event, the Managing Committee would have no power to terminate the services of Shri Thakur. It has further been submitted that, as the Board had the power to approve of appointments of teachers, necessarily, it has the power in accordance with section 19 of the Bihar & Orissa General Clauses Act to refuse approval of the order of termination. The learned counsel has submitted that, in this view of the matter, as the order of termination passed by the Managing Committee is wholly illegal and without jurisdiction even if it be held that the order was passed by the Chairman of the Board dated the 3rd August, 1987 and the 27th November, 1987, as contained in Annexures 14 and 16, respectively, are illegal but in that view of the matter, this Court should not exercise its jurisdiction to quash the aforementioned order as contained in Annexures-14 and 16.

28. Reference in this connection has been made to the decisions in the case of Devendra Prasad Gupta Vs. The State of Bihar and Others, ; Hari Prasad Mandal and Others Vs. Additional Collector and Others, ; Hari Prasad Jalan Vs. The District Magistrate, Champaran at Motihari and Others, ; and Mohammad Swalleh and Others Vs. Third Addl. District Judge, Meerut and Another, . It has further been submitted that in terms of section 6(2) of the said Act as the Board had been vested with the complete power to direct, supervise and control Sanskrit education in the State and, as the power enumerated in section 6(2) is merely illustrative and not exhaustive, the Board has also the incidental and consequential power to have an effective control over Sanskrit institution which include the power to set aside an order of dismissal. According to the learned counsel, the termination of service falls within the ambit of the word "control" and, as such, the Board, in exercise of its functions could also interfere with the order of termination as contained in Annexure-4 to the writ application.

29. It has further been submitted that the Board had the duty to pay salaries and

other allowances to teachers in terms of section 14 (ka) of the Act and, that view of the matter, it has also the power to pass the orders as contained in Annexures-14 and 16 to the writ application directing the Managing Committee of the institution to continue to pay salary of the petitioner.

30. In this connection, reference has been made to Aiyar's Judicial Dictionary, 9th Edition, page 267 wherein the word "control" has been defined as follows:--

The word "control" in Art. 235 of the Constitution of India must include disciplinary jurisdiction. Indeed, the word may be said to be used as a term of art because the Civil Services (Classification, Control and Appeal) Rules used the word "control" and the only rules which can legitimately come under the word "control" are the Disciplinary Rules. The history which lies behind the enactment of these Articles indicates that "control" was vested in the High Court to effectuate a purpose, namely, the securing of the independence of the subordinate judiciary and unless it includes disciplinary control as well as the very object would be frustrated. The word "control" was used for the first time in the Constitution and it is accompanied by the word "vest" which is a strong word. It shows that the High Court is made the sole custodian of the control over the Judiciary. Control, therefore, is not merely the power to arrange the day to day working of the Court but contemplates disciplinary jurisdiction over the presiding Judge.

31. In this connection, reference has also been made to the case of Bharat Bhushan Vs. Cinema and City Magistrate and Another, wherein it was held as follow:--

The word "control" has not been defined in the Act. The dictionary meaning of the word is regulation, direction, restraint reservation (Webster's Dictionary), the fact of controlling, or of checking and directing action; Domination, Command, Sway (Shorter Oxford Dictionary). The word control" as a verb has been explained as "to exercise restraint or direction upon the free action of; to dominate, command.

32. Reliance has also been placed in the cases of the The State of West Bengal Vs. Nripendra Nath Bagchi, ; High Court of Andhra Pradesh v. V.V.S. Krishnamurthy and others (AIR 1979 SC 193) and Corporation of the City of Nagpur, Civil Lines, Nagpur and another Vs. Ramchandra and others, .

33. It has further been submitted by the learned counsel that, in any event the Managing Committee cannot challenge the jurisdiction of the Chairman of the Board inasmuch as it had participated in the proceedings in respect of the matter relating to payment of salary to Shri Thakur and, as such, it must be deemed to have waived his right.

34. Reference in this connection has been made to a decision of the Full Bench of this Court in the case of Chandeshwar Singh and Others etc. Vs. Dahu Mahto and Others etc., and another decision of this Court in the case of Maksudan Rant and

others vs. State of Bihar and others (1983 BBCJ 240).

35. Dr. S.N. Jha, learned counsel for the petitioner in C.W.J.C. 5829 of 1987, on the other hand, submitted that the Board had no power whatsoever to pass the impugned orders as contained in Annexures-14 and 16 to the writ application. It has further been submitted that the impugned orders have been passed by the Chairman of the Board without any authority whatsoever and in a any event the said power has been exercised mala fide and in an arbitrary manner. The learned counsel further submitted that section 6 of the said Act does not confer any power upon the Board to set aside an order of termination.

36. In this connection, the learned counsel has drawn my attention to the provisions of the Bihar State Madarsa Education Board Act, 1981 (Act XXXII of 1982) which is a pari materia with section 6(2) of the said Act. The learned counsel has drawn my attention to the fact that a Division Bench of this Court, while considering section 7(2) of the said Act has taken into consideration and held that the word "control" does not take away the administrative autonomy of a Madarsa in Anjuman Ahle Hadees, Darbhanga and Others Vs. State of Bihar and Others, which runs as follows:--

Learned counsel for the petitioners submitted that the power of the Board to direct, supervise and control Madarsa education was annihilative of the entire autonomy of Managing Committee of a Madarsa. This submission was based upon the expression "supervise" in the main section. It was submitted that the expression "supervise and control" took in its sweep the affairs of a Madarsa. It was submitted that the expression "supervise" implies inspection and control. That expression along with the expression "control" mean that the Madarsa Board would assume complete control of a Madarsa and smother the autonomy of such an institution. The submission is fallacious. The word "supervision" as mentioned in Webster Dictionary means "to oversee, inspect". Supervision does not necessarily mean control of affairs. The content of the expression will depend upon the context and purpose sought to be achieved. Further it will be appreciated that section 7(2) uses the expression "to direct, supervise and control Madarsa Education". The presence of the word "control" along side of "supervise" makes it absolutely clear that the expression "supervise" only means to "inspect or oversee". It does not take away the administrative autonomy of a Madarsa. A Madarsa Managing Committee would still have reasonable scope for managing its affairs. I am unable to hold that section 7(2) (a) and (b) infringes Article 30(1) of the Constitution.

37. The learned counsel stated that the expression "control" will not take away the administrative autonomy of Sanskrit school. In this connection, he has relied upon a decision of this Court in the case of Azimuddin Ansari v. State of Bihar and others (1984 BBCJ 29 : 1983 PLJR 716) wherein this Court has held:--

The next question that comes up for consideration is, even assuming there be some scope of argument as to whether the petitioner completely fulfilled the

criteria laid down in Annexure-6, was the Chairman empowered to substitute his own decision, for the one arrived at by the Managing Committee and the person authorised by the Board to make the appointment. This takes me to the question as to the nature of power conferred on Chairman u/s 18 of the Act. On a bare perusal of the section it is manifest that the power exercisable is supervisory. He is the Chief Executive of the Board. The duty cast upon him is to ensure rules and the regulations are being adhered to, and for carrying out the said duty he has been conferred with all necessary powers. The Act provides for no appeal and revision. Power of appeal, review, revision are creatures of statutes. Right of appeal is a vested right. The remedy aforesaid confer on a party the right to ask the superior court and/or superior authority to set aside or revise a decision of a subordinate Court or authority. It is a right of entering the superior court and invoking its aid and interference to redress the error of the Court below. Two things which are required to constitute appellate jurisdiction are the existence of the relation of superior and inferior Court and the power on the part of the former to review decision of the latter. An appeal is a process of civil law origin and removes a cause, entirely subjecting the fact as well as the law, to a review and a retrial See Shankar V. Krishna and Ganga Bai v. Vijay Kumar.

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Section 18(2) of the Act does not give the Chairman a roving commission either in the direction of stamping with approval the proceedings of a lower authority or in the direction of questioning about and looking to see if possibly under a fair record, there lies some trace of possible error. A right to appeal by a party aggrieved is to be construed as empowering the appellate court to substitute its own opinion for the opinion of the authority which made the decision. This is not the kind of power which has been conferred upon the Chairman u/s 18(2) of the Act. However, he possesses the power for implementation and compliance of the acts, rules and regulations. In cases of dereliction of duty, flagrant abuse of the principles of law and fact, acts of grave injustice the Chairman's interference may be called for. This power is not to be exercised by the Chairman to substitute its own judgment whether on a question of law or facts in place that of the subordinate authority.

In the instant case the Chairman has assumed appellate power and treating the proceedings brought before it as an appeal. He has substituted his own decision for the decision of the lower authority and as such the order contained in Annexure-5 "is" illegal and in excess of jurisdiction.

38. The learned counsel further submitted that, in view of the fact that no notification in terms of section 20 of the said Act has been issued is a complete pointer to the fact that teachers and other non-teaching staff of the Sanskrit school in question continued to be under the employment of the said school. The learned counsel has submitted that the situation is covered by the maxim *Expressum facit cessare tacitum* which means that when there is express mention of certain things then anything not mentioned is excluded.

39. Reference in this connection has been made to the decisions of the Supreme Court in the cases of Union of India (UOI) and Others Vs. Gopal Chandra Misra and Others, and Union of India and Another Vs. Tulsiram Patel and Others, . The learned counsel has further submitted that, in any event, the word "control" envisages superintendence and not adjudication of dispute. In this connection reference is made to the case of The Shamrao Vithal Co-operative Bank Ltd. Vs. Kasargod Pandhuranga Mallya, . It has further been contended by the learned counsel that, from the facts enumerated hereinbefore it is evident that the Managing Committee of the said school is functioning in terms of the orders passed by this Court in C.W.J.C. No. 5440 of 1984. According to the learned counsel, the said writ petition is still pending. He has submitted that, in this view of the matter, there cannot be any doubt that the Managing Committee has been functioning properly and, in this regard, my attention has been drawn to para 9 of the counter-affidavit filed on behalf of the Bihar Sanskrit Education Board, which reads as follows:--

That the Board is not taking any action to compel the Secretary of the Board (a mistake for Managing Committee) to send the salary of the petitioner by suspending or dissolving the Managing Committee of the school in view of the order dated 9.11.1984 passed by this Hon''ble Court in C.W.J.C. No. 5440 of 1984. By this order the respondents of that case (the members of the Ad hoc Managing Committee constituted by the Board on.....and the Board) have been restrained from interfering with the functioning of the Managing Committee of the school, if the ad hoc committee had not started functioning.

40. The learned counsel has further submitted that for the purpose of constitution of the Managing Committee the procedure as laid down under the said Act is to be followed. No rule has been framed nor any procedure has also been laid down as contemplated under sections 6(2)(Dha) and 22(2) of the said Act.

41. Learned counsel has also submitted that the Managing Committee of the school in question still continues. It has further been submitted that even assuming that the Board had the power to approve disciplinary action of the Managing Committee against Shri Thakur. The Chairman of the Board alone had so power, in that regard nor could he alone set aside the order of the Managing Committee.

42. In this connection, reference has been made to the case of The Managing Committee of Rama Nand Uchch Vidyalay Vs. The State of Bihar and Others, and Governing Body of Dayanand Anglo Vedic College Vs. Padmanabha Padhy and Others, .

43. So far as C.W.J.C. No. 5340 of 1987 is concerned, the learned counsel has submitted that the said writ petition is not maintainable in view of the fact that the Managing Committee of the School in question being not a statutory authority or the State within the meaning of Article 12 of the Constitution of

India, no writ can be issued against it.

44. In view of the submissions of the learned counsel as noticed hereinbefore, in my opinion, the following questions arise for consideration in these cases:--

(i) Whether the provisions of the Bihar Sanskrit Shiksha Education Board Act, 1981, confer any power upon the Board to approve or disapprove disciplinary action taken as against a teacher by the Managing Committee of the said school?

(ii) Whether the Managing Committee of the School in question subsist or not?

(iii) Whether any writ can be issued by this Court against the Managing Committee of the school in question?

45. Re : Question No. 1? As noticed hereinbefore, the bone of contention of the learned counsel appearing on behalf of the respondents is that the Board has necessary power to take disciplinary notice against teachers and/or members of the Institution. In view of the fact that the Board has a complete control in respect of the institution in question. In my opinion, the aforesaid argument is fallacious. In terms of the provisions of the said Act, the same has been enacted with a view to develop the Sanskrit education and for better supervision thereof as would be evident from preamble of the said Act. From the various provisions of the Act, as referred to hereinbefore, the Board is mainly concerned with the control of the Sanskrit education and not over the institutions themselves. Such a control on the part of the Board in respect of Sanskrit education may necessarily lead to some control over the institutions where the education through Sanskrit language is being imparted. In my opinion, it cannot be said that the Board by reason of section 6 of the said Act alone had overall control over the institutions themselves.

46. In terms of section 6(2) of the Act, the Board exercises various powers with a view to exercise control over Sanskrit education. It is true that, is none of the decisions as referred to by Mr. Charan, the word "control" has been held to be of wide import but in the instant case one has to bear in mind that the "control", is to be exercised by the Board is not over the institutions but over education. In such circumstances, the Board may have only such powers over the institutions as are specifically conferred upon it and/or which are absolutely necessary in terms of the provisions of the said Act.

47. The word "control", in my opinion, has to be given different meanings, depending upon the circumstances of the case and the subject matter over which the control is to be exercised and the manner in which it is required to be done. From the various provisions contained in the Act, it is evident that the said Act has itself contemplated that, if the State issues a notification in terms of section 20 thereof, all the teachers shall become employees of the Board.

48. In the instants case, admittedly, such a notification has not been issued. In this view of the matter, in opinion, it can safely be concluded that the legislature had no intention to confer upon the Board the disciplinary power over the

teaching and non-teaching staff working in Sanskrit school. The very fact that the Board is to exercise statutory power, the same by necessary implication, means that such power to be exercised within the framework of the state itself. The Board being the statutory functionary cannot be held to have the power which the statute did not contemplate nor can it be allowed to do anything which the statute neither contemplates nor permits.

49. Having regard to the facts and circumstances of the case, I am of opinion that section 6 of the Act does not envisage an exclusive control or over all control but only means a limited control so far as the institutions are concerned i.e. only for the purpose of achieving its object as mentioned in the preamble of the Act as also section 6(1) thereof. In other words, the Board can exercise only such control over the institutions which is necessary for the purpose of giving direction and exercising its supervisory power and controlling the Sanskrit education, only, which, in turn, means exercising such power so that the standard of education is not impaired.

50. The word "control" has been defined in Black's Law Dictionary as follows:--

Control-power or authority to manage, direct, superintend, restrict, regulate, govern, administer oversee.

In *Bank of New South Wales v. Commonwealth* 76, C.L.R. 1 Dixon, J. observed that the word "control" in "an unfortunate word of such wide and ambiguous import that it has been taken to mean something weaker than "restraint", something equivalent to "regulation".

51. Therefore, there cannot be any doubt, as mentioned hereinbefore that the word "control" is capable of different interpretation in context of different statutes.

52. However, taking into consideration the word "control" having been preceded by the words "direct" and "supervise" and further taking into consideration that the same is to be exercised in respect of Sanskrit education up to Madhyama standard, also in my opinion the control which the Board can exercise over the institutions is a very limited one which is required only for the purpose of effectively exercising its power u/s 6(5) and not otherwise. I am, therefore, of opinion that the word "control" must be read in the same line as has been done by this Court in *Anjuman Ahli Hadees v. State of Bihar* (supra). Further, as held by the Supreme Court in the case of *The Shamrao Vithal Co-operative Bank Ltd. Vs. Kasargod Pandhuranga Mallya*, that the word "control" does not envisage any adjudication of dispute.

53. From a perusal of the provisions of the said Act, it is evident that the scheme and object thereof appears to be that the Managing Committee of each school shall have the immediate control over its staff except in the matter of payment of salary to teachers where for a fund has been created in terms of section 14 of the Act read with section 21 thereof. There does not appear to be any

controversy whatsoever with regard to the disciplinary matter over teaching and non-teaching staff of Sanskrit schools. If such a power is construed to be within the domain of the Board in absence of any notification issued u/s 20 of the Act, the same would lead to an anomaly. The very fact that the legislature in its wisdom thought it fit that, if and when a notification is issued by the State of Bihar in exercise of the power conferred u/s 20 of the Act, till such time, the teaching and non-teaching staff continued to be the employees of the Managing committee of the school and not of the Board. In absence of any such notification, even if it be held that the Board may exercise all the control over the teachers of the school in regard to disciplinary action against them, the same, in my opinion, would result in an anomaly. True it is that the Board has the power to approve of the appointment of a teacher but evidently such power has been conferred on the Board in order to see that students are imparted with the Sanskrit education by properly qualified teachers and further for the purpose of exercising its supervisory control over the Sanskrit education so as to maintain the standard thereof. In my opinion, the right to approve of disciplinary action means the right to approve of the order of dismissal. If such a power is held to have been conferred on the Board, the same, in my opinion, would render various provisions of the Act including section 20 thereof nugatory.

54. The very fact that the Act envisages that the institutions should be recognised by the Board, the Managing Committee should be constituted in terms of the provisions of the Act and the rules framed thereunder are clearly suggestive of the fact that the Managing Committee in terms of the provisions of the Act itself has some role to play. If it be held that the Board will have the power to appoint a teacher to see that the salary is paid to him and also will have disciplinary powers and other supervisory powers over teaching and non-teaching staff, in such, event, in my opinion, there would hardly be anything left for the Managing Committee to do.

55. Even assuming that the Board had the power to grant approval so far as the order of dismissal passed against Shri Thakur is concerned, such power cannot be exercised by the Chairman thereof. In terms of the Act, the Chairman of the Board is merely a chief executive officer. There is no provision under the Act that all the powers of the Board can be delegated in favour of the Chairman or any other person. The very fact that the Chairman is the chief executive officer of the Board categorically suggests that he is to exercise such power which will be conferred upon him by the statute or he is merely to see that the decision of the Board is implemented. The power to grant approval so far as the appointment of teacher is concerned, the same has been conferred on the Board and in that view of the matter, necessary power, if any, to grant approval in the matter of dismissal of such teacher also must be held to be in the Board itself and not to any other statutory authority.

56. It is well known that the statutory functionary must perform his statutory functions within the four corners of the statute (see Ram Bahal Singh and Others

Vs. Chhote Narain Singh and Others, . It is also well known that the statutory functionary must carry out the functions in the manner prescribed in the statute and not otherwise (see 1958 BLJR 820). Even sec. 11(2) of the Act does not empower the Chairman to take disciplinary action against a teacher.

57. Taking into consideration all the aspects of the matter, I am of the view that the Board cannot exercise any disciplinary power in regard to teaching and non-teaching staff nor has it any power to grant any approval in respect of the order of dismissal as against the teacher passed by the Managing Committee.

58. However, in the instant case, as seen hereinbefore that Shri Thakur even did not complain before the Board that the order of dismissal passed against him by the Managing Committee was invalid in law. Shri Thakur in spite of his having knowledge that the Managing Committee passed the order of dismissal as against him chose to approach the Board only for the purpose of payment of his salary and the Board curiously without taking that fact into consideration directed the Managing Committee to pay Shri Thakur all his salaries and emoluments. It is well known that which cannot be done directly cannot be done indirectly. If the Chairman of the Board had no power to grant approval so far as the order of dismissal passed against Shri Thakur is concerned, in such event he cannot achieve the said purpose indirectly by asking the Managing Committee to pay his salary. The same, in my opinion, would lead to an anomalous position.

59. It may further be noticed that the Board can direct the Managing Committee to pay the salary to a teacher in terms of the provisions of the said Act which means a teacher who is in service and not a teacher who is not in service. The Managing Committee cannot take work from a teacher who has been dismissed by it. In such an event, it is difficult to comprehend as to how such a dismissed teacher can be directed to be paid his salary although no work can be taken from him. In this view of the matter also, In my opinion, the orders impugned in C.W.J.C. No. 5289 of 1987 cannot be sustained.

60. In any event, as noticed hereinbefore, the petitioner has contended that the Chairman of the Board has passed the impugned orders behind its back. In the writ application, the petitioner has, inter alia, stated as follows:--

34. That it is stated that the office of the Board has been acting in a mala fide manner at the behest and in collusion of the respondent No. 4 with the Chairman Shri Ramawtar Sharma and the respondent No. 4 has been proclaiming from the house top that he can get an order passed from Shri Ramawtar Sharma, the Chairman.

61. The Board in its counter-affidavit does not deny the aforementioned fact. Even the petitioner although has traversed para 34 and other paragraphs of the application but none of the statements made in the said counter-affidavit have been verified. The verification of the said counter-affidavit are as follows:--

21. That the contents of this counter-affidavit has been read over and explained

to me in Hindi which I have understood.

22. That annexures are photo copies of originals.

It is, therefore, clear that the deponent of the said counter-affidavit being the petitioner in C.W.J.C. No. 5340 of 1987 has not verified the statements made in the counter-affidavit at all. In *Satya Narayan Prasad v. State of Bihar* (1988 PLJR 414). I had an occasion to deal with this point and in that judgment I have held as follows:--

13. The counter affidavit which has been filed on behalf of the State is not in accordance with law. The deponent of the counter-affidavit who is an assistant working in the office of the respondent No. 3, has verified the statements made therein on the basis that the same are derived from the records maintained in the office of the deponent. Neither any record has been annexed with the counter-affidavit nor the learned counsel appearing on behalf of the respondents had been able to produce the records before me, when asked for. The deponent of the counter-affidavit also did not disclose as to how he became aware of the facts of the case. He also did not state as to whether he had any personal knowledge with regard to the subject matter of this writ petition. It is now well settled principle of law that an affidavit in support of a writ petition or a counter-affidavit must be in terms of or analogous to the provisions of Order 19 rule 3 of the Code of Civil Procedure.

14. The deponent of the counter-affidavit was merely an assistant. Therefore, it cannot be expected that he was maintaining any record in respect of the petitioners. The importance of verification in support of the statements made in the affidavits have been emphasised in various decisions. Reference in this connection may be made to *The State of Bombay Vs. Purushottam Jog Naik*, and various other decisions referred to in a recent decision of the Supreme Court in *Shivajirao Nilangekar Patil Vs. Dr Mahesh Madhav Gosavi and Others*, .

15. In view of the fact that the counter-affidavit has not been verified in accordance with law nor the relevant records have been produced before me, the counter-affidavit is fit to be ignored and the statements made in the writ petition have got to be accepted as correct.

62. In this view of the matter, the statements made in the writ petition must be deemed to have been admitted.

63. Re : Question No. 2 :-- Section 2(d) of the Act defines the Managing Committee to mean a Managing Committee constituted in terms of the provisions of the said Act, for the purpose of managing the private Sanskrit education and tols upto Madhyama standard. There is no denial that no Managing Committee has been constituted under the said Act, but it is not possible to constitute a Managing Committee unless the procedure therefore are prescribed by the rules.

Section 6(2)(d) of the Act provides for making rules with regard to the service conditions of the Board's employees but the same does not speak about the

service conditions of the School. Evidently, such a power was not required to be conferred in view of the fact that the teachers of the school become employees of the Board, only in the event of publication of a notification by the State Government in terms of section 20 thereof. Section 11(2) of the Act gives power to the Chairman of the Board for control and full disciplinary power over non-teaching and other servants of the Board but the said power does not extend to teachers of a school.

64. From a perusal of the provisions contained in section 11(4)(5) & (6) of the Act, it would be evident that the same do not confer any power to any Chairman. Such power has to be exercised only if expressly provided by the Statute or by the rules framed thereunder. It is, therefore, clear that the Board has no power to exercise disciplinary control over teachers of schools in terms of the provisions of this Act. Such power can be exercised only when a notification u/s 20 thereof is issued. In *Union of India (UOI) and Others Vs. Gopal Chandra Misra and Others*, it has been held by the Supreme Court as follows:--

21. The main reasoning adopted by the learned Judges of the High Court, (per R.B. Misra, M.N. Shukla and C.S. P. Singh, JJ) appears to be that since the act of appellant 2 in writing and addressing the letter dated May 7, 1977, to the President, fully satisfied the three-fold requirement of clause (a) of the proviso, and nothing more was required to be done under that clause either by the "Judge" or by the President at the other end, the resignation was "complete", "final" and "absolute". It was complete "juristic" act as immediately on its receipt by the President on May 7, 1977, itself. It had the effect of cutting short the tenure of the Judge upto August, 1977; and, in the absence of a constitutional provision warranting that course, it could not be withdrawn or revoked even before the date, August 1, 1977; on which in terms of the letter dated May 7, 1977, the resignation was to be effective. Withdrawal is always linked with acceptance. Where no acceptance is required and the resignation has been made in accordance with the prescribed procedure, the process gets exhausted and the resignation becomes a *fait accompli*. Article 217(1), proviso (a) of the Constitution is a self-contained provision. It gives the Judge a unilateral right to cut short his tenure by following the procedure prescribed therein, of his own volition. Such a resignation to be effective does not require acceptance by the President. Article 217 does not give a right to withdraw the resignation once given in accordance with the manner prescribed therein. Since Article 217(i), Proviso (a) sets out a complete machinery with regard to the resignation by a Judge, the right to withdraw resignation can not be implied, the maxim "*expressio facit cessare tacitum*" (when there is express mention of certain things, then any thing not mentioned is excluded.) Recognition of a right of withdrawal of resignation will leave the door wide open to abuse and offend public policy.

In this connection, reference may also be made to the case of *Union of India and Another Vs. Tulsiram Patel and Others*, .

65. In terms of section 22(2)(ga), a power has been conferred upon the State to frame rules with regard to constitution of the Managing Committee, its powers and functions. Admittedly, no such rule has yet been framed. In absence of such a rule, the constitution of a Managing Committee in terms of the provisions of the Act is not possible, as, except the rule making power, there does not appear to be any provision which provides for the manner in which such a Managing Committee is to be constituted. In terms of section 2(dha) of the Act, the Board has the power to constitute and dissolve the Managing Committee which has been constituted in terms of the provisions of the Act and the rules framed there under, and, evidently, therefore, if the Managing Committee is not constituted in terms of the rules framed under the Act, the Board will have no power for constitution or dissolution of the Managing Committee also.

However, in the instant case, the petitioner Managing Committee has been allowed to function by reason of an interim order passed in C.W.J.C. No. 5340 of 1987. After passing of the interim order, as noticed hereinbefore, the Board has dissolved the Ad hoc committee constituted for the purpose of managing the affairs of the said school. In such a situation, it cannot be held by this Court in this writ application, that no legal Managing Committee is functioning. Further, the Managing Committee has been allowed to function by the Board itself. In my opinion, unless a managing committee is constituted under the Act, the old managing committee continues to function as otherwise a vacuum will be created and this institution would be under control and supervision of none.

66. In that view of the matter, it cannot be held that no properly constituted Managing Committee is functioning.

67. Re:Question No. 3 :-- in C.W.J.C. No. 5340 of 1987, the petitioner has prayed for issuance of an appropriate writ upon the Board directing the Board to enforce its order whereby and where under the Managing Committee of the school in question was directed to pay the salary to Shri Thakur. This aspect of the matter has been dealt with in detail while dealing with question no. 1. Suffice it to say that in view of the fact that the Managing Committee has passed an order for termination of service of Shri Thakur which was also communicated to him, the Board had absolutely no jurisdiction to undo the said order and the same must be held to be a nullity.

In this connection, reference may be made to the case of Chief Justice of Andhra Pradesh and Others Vs. L.V.A. Dixitulu and Others, at page 198). In any event, such a direction as prayed for by the petitioner cannot be given by the Board until and unless order passed by the Managing Committee is set aside.

68. Mr. Rajendra Prasad Singh, learned counsel for the petitioner submitted that in view of a decision of a Division Bench of this Court in the case of Kasi Prasad Sharma vs. The State of Bihar (supra) the Managing Committee of the School cannot be said to have any jurisdiction inasmuch as the power in respect thereof has only been conferred by State of Bihar known as Government Sanskrit High

School (Conditions of Service) Rules, 1976. The said rule evidently has no application as has been held by the aforementioned judgment. But, it must be remembered that the school in question is not a Government school. If such a Managing Committee, in my opinion must be allowed to function in respect of the school in question unless and until one is constituted in accordance with the provisions of the Act and the rules framed thereunder. As evidently, no rule has yet been framed, the Board cannot exercise its power for constitution of a Managing Committee. Such a Committee may exercise the power conferred upon it under the provisions of the Act. However, any other Managing Committee which had been functioning from before and which has been allowed to function, it will have all the powers subject to the provisions of the said Act. As the Managing Committee, as held hereinbefore, had the power to appoint the petitioner, it must be held that it had also the necessary power to pass an order of dismissal against the petitioner. The Managing Committee which has not been constituted under the provisions of the Act is a private body. It having not been created by the provisions of the statute, the order passed by it cannot be interfered with by this Court in exercise of its jurisdiction under Articles 226 and 227 of the Constitution.

69. In view of the fact that the Managing Committee of the institution is merely a private body; in terms of section 14(b) of the Specific Relief Act, no court can enforce an agreement in respect of personal service. It is now well known that in such a situation the only relief which can be granted to such an employee is by way of damages in a properly constituted body before a civil court.

Reference In this connection may be made to the case of Executive Committee of Vaish Degree College, Shamli and Others Vs. Lakshmi Narain and Others, and Dipak Kumar Biswas Vs. Director of Public Instruction and Others, , for the proposition that a writ petition is not maintainable against the Managing Committee of private institution.

Reference in this connection may also be made to a recent Full Bench decision of this Court in Smt. Manju Devi Vs. The District Superintendent of Education, Bhagulpur and Others, .

70. I am, therefore, of opinion that this Court has no jurisdiction to issue a writ as against the Managing Committee of the School in question.

71. Before parting with the case, however, the two points raised by Shri Rajendra Prasad Singh may be disposed of. He contended that in view of the fact that the Managing Committee took part in the proceeding before the Chairman of the Board, it must be deemed to have waived its right to challenge the jurisdiction of the Chairman, Mr. Singh has placed strong reliance upon a Full Bench decision of this Court in the case of Chandeshwar Singh and Others etc. Vs. Dahu Mahto and Others etc., . However, in the said decision, it has been held as follows:--

It is no doubt, true that a tribunal or an authority acting under a special statute derives its powers to so act within the four corners of that statute. I do not find

any reason why the well defined principles of procedure which do not mention or in any way, in conflict with the special provision in those special Acts, should not be applied to cases arising under the Special Acts.

The legal principle is well settled by now that there is a marked distinction between the cases in which the Courts has the jurisdiction to try a case and where a jurisdiction is irregularly exercised by a court is now well settled whereas in the former case the court ought not to have based upon the trial court in the latter, it could have avoided the trial but not necessarily. The competency of a court to try an action goes to the root of the matter and when such competence is not found it has no jurisdiction at all to try the case. But objection based on irregular exercise of jurisdiction in a matter which parties may waive equally well settled is the proposition that where there are two or more competent courts which can entertain a suit, parties to the concerned transaction can contract to vest jurisdiction in one of such courts to try their disputes, if such a contract is clear, unambiguous and explicit, it is not hit by section 28 of the Contract Act either.

72. In view of my findings aforementioned that the Chairman of the Board had absolutely no jurisdiction, the orders passed by him were nullities and in that view of the matter it is open to the petitioner to challenge the jurisdiction of the Chairman of the Board. Further, the petitioner has questioned the jurisdiction of the Chairman before him also. In that view of the matter, the petitioner can legitimately challenge the jurisdiction of the Chairman of the Board before this Court. In my opinion, therefore, the Managing Committee cannot be said to have waived its right as suggested by Shri Singh so far as the jurisdiction of the Chairman of the Board is concerned as the petitioner cannot be said to have participated in the proceeding before the Board without any demur.

73. Mr. Singh has further contended that in view of the fact that the Managing Committee had no jurisdiction to terminate the services of the petitioner as he was not given an opportunity of hearing and further in view of the fact that the Managing Committee itself had no jurisdiction in that regard, this Court should not exercise its jurisdiction under Articles 226 and 227 of the Constitution in favour of the Managing Committee of the said school. As referred to hereinbefore Shri Singh has, in this connection, cited several decisions of this Court as well as the Supreme Court, namely, *Devendra Prasad Gupta Vs. The State of Bihar and Others*, ; *Hari Prasad Mandal and Others Vs. Additional Collector and Others*, ; *Hari Prasad Jalan Vs. The District Magistrate, Champaran at Motihari and Others*, and *Mohammad Swalleh and Others Vs. Third Addl. District Judge, Meerut and Another*, . This contention of Mr. Singh, in my opinion, has also no substance.

74. As noticed hereinbefore, the Managing Committee of the school is not amenable to writ jurisdiction. If it is not amenable to writ jurisdiction of this Court, it has no power to quash the order of termination of service against Shri Thakur. In this view of the matter, the question of this Court's refusing to exercise its power or to quash even the order passed by the Managing

Committee does not and cannot arise.

75. As held hereinbefore the order of termination of service of Shri Thakur passed by the Managing Committee may be right or wrong but thereby no right has accrued to the petitioner to enforce the contract of his personal service. If Shri Thakur cannot get any relief as against the Managing Committee by way of reinstatement from this Court, the question of quashing the order of termination of services passed by the Managing Committee does not and cannot arise. The order passed by the Managing Committee, which is not a statutory body, cannot be set aside or quashed by this Court in view of section 14(b) of the Specific Relief Act, 1963. An order passed by a managing committee of a private institution dismissing an employee from his services cannot be said to be illegal or against the provisions of law only because there had been no compliance with the principles of natural justice.

It is only a state which is required to follow the principles of natural justice or rule of law; not a private body. It is now well known that the remedy of such an employee lies, if any, in filing a suit for damages. In this view of the matter, in my opinion, the question of quashing the order of termination of Shri Thakur passed by the managing committee does not arise, on the other hand, as found hereinbefore, the order of the Chairman of the Board is woolly illegal and without jurisdiction and, as such, the same is liable to be quashed by this Court.

76. In such a situation, in my opinion, it is not possible to agree to the submissions of the learned counsel. Taking into consideration all aspects of the matter, I am of opinion that the petitioner of C.W.J.C. No. 5340 of 1987 cannot get any relief from this Court. In the result, C.W.J.C. No. 5340 of 1987 is dismissed and C.W.J.C. No. 5829 of 1987 is allowed and the orders as contained in Annexures-14 and 15 thereof are hereby quashed. However, in the facts and circumstances of these cases, there shall be no order as to costs.