
(1999) 12 AP CK 0080
In the Andhra Pradesh High Court
Case No : Writ Petition No. 1375 of 1999

C.S.H.N. Murthy

APPELLANT

Vs

Government of Andhra Pradesh and others

RESPONDENT

Date of Decision : 17-12-1999

Acts Referred:

Andhra Pradesh Education Act, 1982 — Section 79, 80, 81, 82, 83
Andhra Pradesh Private Educational Institutions Employees (Disciplinary Control) Rules, 1983 — Rule 3, 5, 7
Constitution of India, 1950 — Article 311
Industrial Disputes Act, 1947 — Section 2, 25
Life Insurance Corporation (Staff) Regulations, 1960 — Regulation 14

Citation : (2000) 1 ALD 434

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : M/s. Abhinand Kumar Shavali, for Mr. N. Rama Mohan Rao, for the Appellant; Government Pleader, for School Education and Mr. O. Manohar Reddy, for the Respondent

Judgement

1. The petitioner is a postgraduate and a graduate in Education (B.Ed). The petitioner was appointed as Head Master by the 3rd respondent school on 2-6-1995. He was placed on probation. The appointment was for a period of one year from 3-6-1995. It can be extended further after the end of academic year. As per the appointment order, the petitioner is liable for termination if his work is not found to be upto the expected level during the period of probation. The appointment order also says that the petitioner shall also be in charge of Principal of the Junior College, which is expected to be commenced in the academic year.

2. On 9-4-1996, the Managing Committee served a communication informing the petitioner that his services are terminated with effect from 30-4-1996. The petitioner challenged this by filing WP No. 9169 of 1996. At the interlocutory stage, this Court suspended the order of termination on 24-6-1996. Be that as it

may, on 20-9-1996, this Court disposed of the writ petition. As the petitioner did not avail the right of appeal u/s 80 of A.P. Education Act, 1982 (the Act, for brevity), he was given an opportunity to avail the appeal before the competent authority within two weeks and the appellate authority was directed to dispose of the appeal within two months.

3. The appellate authority by the proceedings dated 26-2-1997 allowed the appeal holding that the third respondent could not have terminated the services of the petitioner without following the provisions of Section 79 of the Act and the Rules issued by the first respondent in G.O. Ms. No.467, Education Department dated 3-11-1993. The second respondent thus directed the 3rd respondent to reinstate the petitioner immediately. The order was not implemented. Hence, the 2nd respondent issued further orders on 17-6-1997 directing the 3rd respondent to comply with the orders of the appellate authority dated 26-2-1997 by 30-6-1997. At this stage, the 3rd respondent filed an appeal before the first respondent against the orders of the second respondent. The first respondent rejected the same as time barred. At this stage, the second respondent again issued proceedings on 20-10-1997 directing the 3rd respondent to implement the orders of the appellate authority dated 26-2-1997 in vain. The 3rd respondent again filed a representation before the first respondent, requesting that the appeal filed by the 3rd respondent may be considered on merits. This was rejected by the first respondent on 9-12-1997 pointing out that even if an appeal by the Management were treated as having been presented on 11-4-1997, the same would be barred by time for preferring second appeal. Even after this, the 3rd respondent did not implement the order of the 2nd respondent and hence the petitioner filed WP No.32657 of 1997 for a direction to the respondents to implement the proceedings dated 22-6-1997 passed by the 2nd respondent. On 26-12-1997, this Court passed an interim order directing the 3rd respondent to comply with the orders of the 2nd respondent. At this stage, the 3rd respondent filed WP No.33738 of 1997 questioning the orders passed by the 1st respondent on 9-12-1997 by which the 1st respondent clarified the position with regard to the entertaining the second appeal preferred by the 3rd respondent. This Court disposed of the writ petition filed by the Management remanding the matter for fresh disposal to the 1st respondent. The Management was directed to pay salary to the petitioner from 26-12-1997 till first respondent passes final orders. In accordance with the orders of this Court, the petitioner was paid salary and allowances upto 31-12-1998.

4. After this Court remanded the matter to the 1st respondent, as mentioned above, the 1st respondent heard the matter on 17-11-1998 by affording an opportunity to the petitioner as well as the 3rd respondent and by the impugned orders in G.O. Ms. No.7, Education (PS-I) Department dated 2-1-1999 allowed the appeal filed by the 3rd respondent setting aside the order of appellate authority dated 26-2-1997 passed by the 2nd respondent. Aggrieved by the same, the petitioner has filed this writ petition. This Court issued notice before admission on 2-3-1999. After receiving the notice, the 3rd respondent filed

counter affidavit. As the matter is coming up for admission, with the consent of both the Counsel, the matter is being disposed of at the admission stage.

5. In the counter affidavit filed by the Secretary/Correspondent on behalf of the 3rd respondent while denying the contribution made by the petitioner to the progress of the school, has taken a stand that the provisions of Section 79 of the Act are not attracted to this case and that the said provisions will apply only in respect of the teachers who are appointed on a temporary/permanent basis and do not apply to the teachers who are appointed on probation. As the petitioner is appointed on probation, the termination of the petitioner does not cast a stigma and even if the termination is held to be not legal, the petitioner would be entitled to only two months salary and cannot claim to be continued as permanent employee. The order of termination of probationer does not amount to dismissal and being a simple order of discharge of the employee on probation, the question of issuing notice and conducting enquiry does not arise. While taking a stand as noted herein, the 3rd respondent relied on a judgment of the Supreme Court in N. Ammad Vs. The Manager, Emjay High School and Others, and contended that a bad Head Master can spoil the entire institution and the petitioner does not possess the qualities of a good Head Master and, therefore, reinstating the petitioner as Head Master is not in the interest of the school and children.

6. I have heard the learned Counsel for the petitioner Sri Abhinand Kumar for Sri N. Rama Mohan Rao and the learned Counsel for the 3rd respondent Sri O. Manohar Reddy at length. Both of them reiterated the submissions made in the pleadings.

7. Having regard to the pleadings and contentions raised before this Court, the points that arise for consideration are as under:

(1) Whether the order of termination dated 9-4-1996 passed by the 3rd respondent terminating the services of the petitioner amounts to termination for misconduct casting stigma on the petitioner's career?

(2) Whether the provisions of Section 79 of the Act are attracted when a private educational institution terminates/discharges the services of a teacher/Head master who is on probation ?

(3) To what relief?

In re point No. 1:

8. The petitioner was appointed on 2-6-1995. The appointment order inter alia contains a condition that the petitioner is appointed for a period of one year from 3-6-1995 and that if the petitioner's work is not found to be to the expected level during the period of probation, his services are liable to be terminated without assigning any reasons. Admittedly, the petitioner was on probation for a period of one year from the date of appointment. When the 3rd respondent passed the order on 9-4-1996, he was on probation. Therefore, it has to be held

that the petitioner was discharged during the period of probation. The order passed by the 3rd respondent on 9-4-1996 reads thus:

"The Management regrets very much to inform you that your services in this organisation is terminated with effect from 30-4-1996 and we are thankful to you for rendering your services during this year.

You may settle your accounts by clearing all the dues, if any, to the organisation.

You are requested to hand over all the charge to the Secretary."

9. A plain reading of the order of termination discharging the petitioner during probation does not show that any stigma is cast on the petitioner. Therefore, the discharge of the petitioner does not amount to removal/dismissal from service as Headmaster of the 3rd respondent-School.

10. The next question while scrutinising the order of the 3rd respondent dated 9-4-1996 is whether the said order can be said to be founded on misconduct or some allegations which are only the motive for the 3rd respondent to pass the order of termination. The test to decide as to under what circumstances the termination of a probationer can be said to be founded on misconduct and under what circumstances the same can be said to be the result of some allegations which is the motive for passing the order of termination are laid down by the Supreme Court in *Dipti Prakash Banerjee Vs. Satvendra Nath Bose National center for Basic Sciences, Calcutta and Others*, . After referring to *US. Gupta v. U.P. State Agro-Industries Corporation Limited* AIR 1999 SCW 207, the law was laid down as follows:

"If findings were arrived at in inquiry as to misconduct, behind the back of the officer or without a regular departmental enquiry, the simple order of termination is to be treated as founded on the allegations and will be bad. But if the inquiry was not held, no finding were arrived at and the employer was not inclined to conduct an inquiry, but at the same time, he did not want to continue the employee against whom there were complaints, it would only be a case of motive and the order would not be bad. "

11. Therefore, from a reading of the order of termination as well as the pleadings before this Court, it is not possible to conclude that the termination of the petitioner is founded on misconduct and requires a regular enquiry as per the provisions of the Act and A.P. Private Educational Institutions Employees (Disciplinary Control) Rules, 1993 (hereafter called the Rules).

12. Before the appellate authority, the 2nd respondent herein, the Management of the 3rd respondent, justified the termination of the petitioner inter alia on the ground that the petitioner is mentally unstable, that the petitioner's behaviour is unbecoming of a Headmaster of a School, that the Management, staff, parents and students found the petitioner to be arrogant and misbehaving with the staff, parents and students and, therefore, without conducting enquiry he was discharged. As held by Supreme Court in *Banerjee* 's case (supra), Management

would be justified in simply discharging the petitioner without choosing to conduct enquiry and in such an event, the allegations, those enumerated above, would be only a motive for the termination order and it cannot be said that the termination is founded on misconduct. Therefore, on point No.1, it is to be held that the order of termination-dated 9-4-1996 does not amount to termination for misconduct and the same does not cast stigma on the petitioner.

In re point No. 2:

13. A reading of the order passed by the 2nd respondent dated 26-2-1997 shows that in effect the 2nd respondent allowed the appeal of the petitioner mainly on the ground that the 3rd respondent did not obtain prior approval before passing the termination order against the petitioner. This, according to the 2nd respondent, is in violation of Section 79 of the Act and also in violation of the Rules. As noticed earlier, the matter ultimately came to be considered by the 1st respondent as the second appellate authority. The 1st respondent set the order of the 2nd respondent aside. In doing so, the 1st respondent also referred to the same circumstances that were placed before the 2nd respondent by the Management, a reference to which has already been made. It is, however, appropriate to refer to the cotitention of the Management (the third respondent herein) before the 2nd respondent as well as the 1st respondent as noticed by these authorities. The 2nd respondent in his order dated 26-2-1997 referred to the contentions of the Management as follows:

"On the other hand on behalf of the Management Sri Ramachandram, Correspondent of the School has attended the hearing and explained the details of misbehaviour of Sri C.S.H.N. Murthy with lady staff members, students, parents. Further he has shown good number of examples of mental instability of the above terminated Headmaster and he has also explained that he is unbecoming of a Headmaster of the Secondary School and he has stated that the appointment order itself indicated that he was appointed only for 11 months purely on temporary basis and if he shows his efficiency, caliber for the improvement of the institution i.e., academic in general and administration in power further continuance may be considered. But during his 11 months service in the institution the management, staff, parents and students have found that he is arrogant, misbehaving with staff, parents and students. Hence he was terminated from the service to maintain the decorum of the institution and relieve the mental torture of the students and institution staff as he is mentally unsound."

The 1st respondent in the impugned G.O. dated 2-1-1999 noticed the contentions of the Management as follows:

"On behalf of the management Sri K.K. Balakrishnan, Secretary of the NSKK High School has explained the details of misbehaviour of Sri CSHN Murthy with lady staff members, students and parents. Further he has shown a good number of examples of the mental inability of the above-terminated Headmaster. He has

also explained that the appointment orders itself indicate that he was appointed for one year purely on temporary basis, and after showing his caliber for the improvement of the institution, his further continuance may be considered. During his 11 months service in the institution the management, staff, students and parents have found that he is arrogant, misbehaves with parents and students and hence he was terminated from service during the probationary period to maintain the decorum of the institution and to relieve the mental torture of the students and staff."

14. A reading of the two passages from the orders of the 2nd respondent as well as the first respondent would show that both the authorities have not recorded any finding nor the Management contended that the termination order was passed based on the allegations. Therefore, it has to be concluded that the motive for passing the impugned order is the alleged misbehaviour of the petitioner with the staff members, and the alleged arrogant behaviour of the petitioner with parents, students and other staff. The same cannot be said to be foundation for passing the order of termination on 9-6-1996. In fact, the counter affidavit filed before this Court by the 3rd respondent also discloses that the allegations made by the Management during the enquiry before the 2nd respondent or the 1st respondent are not the foundation for termination of the petitioner during the period of probation.

15. The next important question that arises for consideration is whether the order of termination during the probation is illegal being in violation of the provisions of Section 79 of the Act.

16. The learned Counsel for the petitioner contends that while passing the order of termination, the 3rd respondent did not comply with the mandatory requirements of Section 79 of the Act and, therefore, it was incumbent on the part of the first respondent to decide as to whether the third respondent has followed the provisions of Section 79 of the Act. He further contended that the first respondent passed the impugned order without due application of mind and without examining the crucial question regarding the applicability of Section 79 of the Act.

17. The learned Counsel for the third respondent, Mr. O. Manohar Reddy, submits that the provisions of Section 79 of the Act are not applicable or are not attracted when an employee of a school or educational institution is terminated during the period of probation. According to the learned Counsel, the provisions of Section 79 of the Act are attracted only when a member of teaching staff or non-teaching staff is dismissed/ removed/reduced in rank after an enquiry in which the staff member is informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. In other words, according to the learned Counsel for the petitioner a teacher or a non-teaching staff member can be removed/dismissed/reduced in rank only after conducting a regular enquiry after giving a reasonable opportunity to answer the charges. Even in such an event, the Management shall not pass any order of dismissal/

removal/reduction in rank without prior approval of the competent authority and, hence, Section 79 of the Act is not applicable. Therefore, according to the learned Counsel, the order passed by the 2nd respondent herein, is wholly unsustainable and illegal and the order of the first respondent, though does not specifically advert to this question, should be taken that the Government agreed with this contention while setting aside the order of the 2nd respondent. So, according to the learned Counsel, the impugned order is a reasoned order passed by the first respondent after giving adequate opportunity to both the parties and as the order passed by the Regional Joint Director is an illegal order, the effect of interfering with the order of the first respondent would amount to restoring an illegal order. Therefore, the learned Counsel for the 3rd respondent prays to dismiss the writ petition.

18. Chapter XIV of the Act contains provisions dealing with payment of salaries and allowances to employees of private educational institutions and disciplinary action against the employees of the private educational institutions. The said Chapter contains Sections 79, 80, 81, 82, 83 and 84. As noticed above, the learned Counsel for the petitioner places reliance on Section 79(1) of the Act. In the alternative he submits that though termination of probation does not fall within Section 79(1) of the Act, such a situation falls within Section 83 of the Act which also is to the effect that even when an employee is retrenched, the prior approval of the competent authority or the next higher authority is required. In support of this contention he relies on a judgment of a Division Bench of this Court in Vasavi College of Engineering Vs. A. Suryanarayana and Others, . The submission of Sri O. Manohar Reddy is already noted. The gist of his submission is that discharge of a probationer does not amount to removal or dismissal and, therefore, Section 79 of the Act which provides for the Management of the private educational institution obtaining prior approval of the competent authority, is not at all attracted. In support of his contention he relies on a Constitutional Bench judgment of the Supreme Court in Ranendra Chandra Banerjee Vs. Union of India (UOI), . He also relies on another judgment of the Supreme Court in Governing Council of Kidwai Memorial Institute of Oncology, Bangalore Vs. Dr. Pandurang Godwalkar and another, .

19. The rival contentions may be examined after noticing the provisions of sub-sections (1) and (5) of Section 79 and Section 83 of the Act as under:

"79. Dismissal, removal or reduction in rank or suspension, etc., of employee of private institutions--(1) No teacher or member of the non-teaching staff employed in any private institution (hereinafter in this chapter referred to as the employee) shall be dismissed, removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges:

Provided that no order of dismissal, removal or reduction in rank shall be passed under this sub-section against an employee other than an employee of minority educational institution without the prior approval of such authority or Officer as

may be prescribed for different classes of private institutions;

Provided further that the management may prefer an appeal against any order of the Officer or authority refusing approval under this sub-section to such authority or officer and within such period as may be prescribed.

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5. Before imposing any penalty, other than the penalties specified in subsection (1), an employee shall be informed in writing of the allegations on which action is proposed to be taken and be given an opportunity of making a representation, but it shall not be necessary to hold an oral inquiry into such allegations.

83. Retrenchment of employees--Where retrenchment of any employee is rendered necessary by the management or competent authority consequent on any change relating to education or course of instruction or to any other matter, such retrenchment may be, effected with the prior approval of the competent authority or the next higher authority, as the case may be."

20. The Governor of Andhra Pradesh promulgated Rules in exercise of powers conferred by Sections 79, 80 and 83 read with Section 99 of the Act. These Rules were issued in G.O. Ms. No.467, Education Department dated 3-11-1993 and called A.P. Private Educational Institutions Employees (disciplinary control) Rules, 1993 (hereafter called the Rules). Rule 3 mentions various authorities like the District Educational Officer, Regional Joint Director and Director who are competent under Sections 79, 80 and 83 of the Act. Rule 7 that is relevant for the purposes of this case provides for disciplinary procedure to be followed by the private educational institutions before passing an order of dismissal/removal/reduction in rank of an employee. Rule 8 is to the effect that no order imposing any of the penalties of retrenching an employee shall be valid unless the provisions of Section 83 are complied with.

21. A reading of sub-section (1) of Section 79 and Section 83 of the Act makes abundantly clear that the prior approval of the competent authority is required if an employee of private educational institution is dismissed/removed/reduced in rank. Such approval is also required where an employee is retrenched by the Management of any charge relating to education or course of instruction or consequent to any other matter. In the event of dismissal/removal/ reduction in rank, sub-section (1) of Section 79 read with Rule 7 provides for elaborate procedure of drawing up of charges and also conducting oral enquiry, if necessary. Therefore, it is not unreasonable to infer that the prior approval of the competent authority is required when an employee is dismissed/removed/ reduced in rank after following the procedure as contemplated under the provisions of sub-section (1) of Section 79 of the Act and the relevant rules-Sub-section (5) of Section 79 lends support to this view. A reading of sub-section (5)

of Section 79 shows that before imposing any other penalties (which are provided for under Rule 5 of the Rules), an employee need be given an opportunity of making representation after being informed of the allegations and it shall not be necessary to hold any oral enquiry into such allegations. In the case of imposition of other penalties as provided for under Rule 5 of the Rules, prior approval of the competent authority is not necessary.

22. Therefore, if the discharge of a probationer or termination of an employee during the period of probation amounts to removal/dismissal, the private educational institution has to comply with the mandatory requirements of sub-section (1) of Section 79 of the Act read with relevant rules. The converse of it is that if the discharge of the probationer or termination of an employee during the period of probation does not amount to dismissal or removal, prior approval of the competent authority is not required, for the allegations in such a case are only motive and not a foundation.

23. It is to be noticed that clause (2) of Article 311 of the Constitution of India also provides that no member of a civil service of the Union or State shall be dismissed/ removed/reduced in rank except after an enquiry in which he has been informed of the charges against him and giving a reasonable opportunity of being heard in respect of those charges. The effect of subsection (1) of Section 79 of the Act and the effect of clause (2) of Article 311 of the Constitution is the same. In fact, in a way, they are in pari materia.

24. Dealing with cases where discharge of probationers challenged the action before the Courts, it has been repeatedly held that discharge of a probationer simplicitor does not amount to dismissal/removal and, therefore, no enquiry is necessary. Some of these cases may be referred to In Ranendra Chandra Banerjee 's case (supra), the appellant was given a show-cause notice during the extended period of probation and after considering the explanation given by him, his services were terminated. The order of termination was challenged before the High Court on the ground that he was entitled to the protection of Article 311 of the Constitution of India and as the same was denied to him, the termination order was illegal. The High Court held that the appellant was not entitled to the protection under Article 311(2) of the Constitution and also the service rules. On the certificate granted by the High Court, a Constitution Bench of the Supreme Court decided the appeal. By unanimous judgment, the Apex Court held as follows:

"..... Further it is equally settled that a Government servant who is on probation can be discharged and such discharge would not amount to dismissal or removal within the meaning of Article 311(2) and would not attract the protection of that Article where the services of a probationer are terminated in accordance with the rules and not by way of punishment. A probationer has no right to the post held by him and under the terms of his appointment he is liable to be discharged at any time during the period of his probation subject to the rules governing such cases; (See : The State of Orissa and Another Vs. Ram Narayan Das, . The

appellant in the present case was undoubtedly a probationer. There is also no doubt that the termination of his service was not by way of punishment and cannot therefore amount to dismissal or removal within the meaning of Article 311....."

25. In Pandurang's case (supra), the respondent was terminated before expiry of one year of probation. During the challenge before the High Court, having regard to the assertions made by Mr. Pandurang that he was terminated because of some complaints, the learned Judge after perusal of the records produced concluded that the services of the appellant were terminated for misconduct and, therefore, the employer ought to have conducted enquiry. On appeal, the Supreme Court held that even if an employee is terminated during the period of probation by an order of termination simplicitor after some preliminary enquiry, the same does not amount to removal from service on penal charges. In that connection, the Supreme Court held as follows:

"..... The principle of tearing of the veil for finding out the real nature of the order shall be applicable only in a case where the Court is satisfied that there is a direct nexus between the charge so levelled and the action taken. If the decision is taken to terminate the service of an employee during the period of probation, after taking into consideration the overall performance and some action or inaction on the part of such employee, then it cannot be said that it amounts to his removal from service as punishment....."

In the same judgment, the Apex Court also ruled that-

"Even if such employee while questioning the validity of an order of termination simplicitor brings on the record that some preliminary enquiry or examination of some allegations had been made. that will not vitiate the order of termination..... even if misconduct, negligence, inefficiency may be the motive or the influencing factor which induced the employer to terminate the service of the employee which such employer admittedly had under the terms of the appointment, such termination cannot be held to be penalty or punishment....." (Emphasis mine)

26. In Kunwar Arun Kumar Vs. U.P. Hill Electronics Corporation Ltd. and Others, , the Supreme Court observed as follows:

".... The reasons mentioned in the order may be a motive and not a foundation as a ground for dismissal. During the period of probation, the authorities are entitled to assess the suitability of the candidates and if it is found that the candidate is not suitable to remain in service they are entitled to record a finding of unsatisfactory performance of the work and duties during the period of probation. Under these circumstances, necessarily the appointing authority has to look into the performance of the work and duties during the period of probation and if they record a finding that during that probation period, the work and performance of the duties were unsatisfactory, they are entitled to terminate the service in terms of the letter of appointment without conducting any enquiry.

That does not amount to any stigma....." (Emphasis mine)

27. It is also useful to refer to another judgment of the Supreme Court in 1998 (1) PLJR 77 (SC) . In the said judgment, the Hon"ble Supreme Court held as follows:

"..... An order terminating the services of a probationer can be questioned only if it is shown that it has been passed arbitrarily or has been passed by way of punishment without complying with the requirements of Article 311 of the Constitution. Since a probationer has no right to hold the post on which he has been appointed on probation, he cannot claim a right to be heard before an order terminating his services is passed..... It is therefore not possible to hold that there is an obligation to communicate the adverse material to a probationer before a decision is taken on the basis of the said material that he is not fit for being retained in service. Such material can be relied upon to show that such a decision does not suffer from the vice of arbitrariness and is not capricious....."

28. In D.P. Banerjee's case (supra), the Hon"ble Supreme Court referred to the entire case law dealing with the question of termination of an employee during the period of probation - when can an order of termination of a probationer be said to contain an express stigma ? This question was considered by the Hon"ble Supreme Court having regard to the law laid down by Apex Court in Samsher Singh Vs. State of Punjab and Another, , Kamal Kishore Lakshman Vs. Management of Pan American World Airways Inc. and Others, , Ranmarayan Das's case (supra), Hari Singh Mann Vs. State of Punjab and Others, , State of Gujarat Vs. Akhilesh C. Bhargav and Others, and also Ranendra Chandra Banerjee's case (supra) and held that whether the order of termination of a probationer amounts to stigma depends on facts and circumstances of each case and the language or words employed in the order of termination of the probationer." The Hon"ble Supreme Court also held that the words "amounting to stigma" need not be contained in the order of termination but may also be contained in an order/proceeding referred to in the order of termination or in the Annexure thereto and such a link order would also vitiate the order of termination.

29. Applying the said principles, in the present case the order of termination of the petitioner, which is termination simplicitor, during the period of probation, does not amount to stigma. Therefore, it does not amount to removal or dismissal, which means that there need not be any enquiry and in view of this no prior approval of the competent authority is necessary. This view is also supported by sub-section (5) of Section 79 of the Act, which says that prior approval of the competent authority is not necessary when the private educational institution imposes other punishments than dismissal/removal

30. The learned Counsel for the petitioner relied on the judgment of this Court in Vasavi Engineering College case (supra). The alternative submission made by him, relying on this judgment, is that prior approval of the competent authority

is required not only when the employee is dismissed/removed/reduced in rank as per the provisions of sub-section (1) of Section 79 but also when an employee is retrenched u/s 83 of the Act. The learned Counsel relies on the words "or to any other matter" appearing in Section 83 of the Act and submits that even termination of probationer requires prior approval of competent authority. As seen from Section 83 extracted above, when the private educational institution resorts to retrenchment of an employee consequent on any change relating to education or course of education or change due to any other matter, the prior approval of the competent authority or the next higher authority is required. The retrenchment of an employee by the Management of the private educational institution may be consequent on (i) change relating to education; or (ii) change relating to course of instruction; or (iii) change relating to any other matter.

31. The learned Counsel for the petitioner would like this Court to bring a situation of termination of probationer within the scope of situation (iii) i.e., retrenchment of an employee consequent on change relating to any other matter. After giving anxious consideration, I am not able to bring myself up to countenance the submission made by the learned Counsel for the petitioner. A plain reading of Section 83 of the Act does not permit termination of any probationer either to be equated with retrenchment or with change relating to education or course of instruction or any other matter relating to education. It is not within one's comprehension as to how an employee can be discharged or terminated during the period of probation consequent on change relating to education or course of instruction or any other matter. The discharge of a probationer or termination of a probationer cannot be termed as retrenchment. This view is supported by the decisions of the Supreme Court in *M. Venugopal Vs. The Divisional Manager, Life Insurance Corporation of India, Machilipatnam, Andhra Pradesh* and another, and *Life Insurance Corporation of India and Another Vs. Raghavendra Seshagiri Rao Kulkarni*, . The concept of placing an employee under probation is well settled. If the conditions contained in any rule for discharge of a probationer are not satisfied, even change relating to education or course of instruction cannot be a ground, except unsatisfactory work or conduct of the probationer.

32. In the case of *Vasavi Engineering College (supra)*, this Court was dealing with the case of an Assistant Professor in Civil Engineering who was terminated because the selection committee did not find him to be fit for the post of Professor. Therefore, the temporary services of the petitioner were terminated. In the writ petition filed by the employee, the College contended that termination of services of a person who was found academically unfit would not amount to retrenchment. However, the learned single Judge relying on the order of termination which styled the termination as retrenchment allowed the writ petition on the ground that the provisions of Section 83 of the Act were not followed. In the context of this factual situation, this Court held that the words "any other matter" appearing in Section 83 of the Act relates to all other matters apart from the two categories mentioned preceding phrases. In the present case,

the petitioner's services were terminated during the period of probation as per the conditions of appointment. Therefore, in the case of termination of a probationer by the private educational institution, in my considered opinion the provisions of Section 83 are not attracted. The dicta of the Division Bench, in my view, does not support the submission made by the learned Counsel for the petitioner.

33. In Venugopal's case (supra), the Supreme Court considered the question whether discharge of a probationer in accordance with the terms and conditions of the appointment order as well as the regulations amounts to retrenchment attracting the provisions of Section 25F of the Industrial Disputes Act, 1947 (the ID Act). The Hon'ble Supreme Court referred to the conditions of the appointment order as well as Regulation 14 of the Life Insurance Corporation (Staff) Regulations, 1960 and also clause (bb) of Section 2(oo) of the ID Act and held that termination of services of the employee during the, period of probation in terms of the order of appointment does not amount to retrenchment and, therefore, the provisions of Section 25F of the ID Act are not attracted. In that connection, in para 15 of the judgment, the Hon'ble Supreme Court referring to Pandurang's case (supra), observed that the services of a probationer can be terminated after making overall assessment of his performance during the period of probation and no notice is required to be given before terminating the services. Again the question whether termination of a probationer amounts to retrenchment came up for consideration before the Supreme Court in Kulkarni's case (supra). Following Venugopal's case (supra), the Supreme Court answered the question in the negative and in that context observed as follows;

"The period of probation is a period of test during which the work and conduct of an employee is under scrutiny. If on an assessment of his work and conduct during this period it is found that he was not suitable for the post it would be open to the employer to terminate his services. His services cannot be equated with that of a permanent employee who, on account of his status, is entitled to be retained in service and his services cannot be terminated abruptly without any notice or plausible cause. This is based on the principle that a substantive appointment to a permanent post in a public service confers substantive right to the post and the person appointed on that post becomes entitled to hold an lien on the post. He gets the right to continue on the post till he attains the age of superannuation or is dismissed or removed from service for misconduct etc., after disciplinary proceedings in accordance with the rules at which he is given a fair and reasonable opportunity of being heard. "

34. Therefore, as per the law laid down by the Supreme Court, termination of a probationer during the period of probation does not amount to retrenchment. An employee on probation cannot be equated with another employee who is appointed permanently and acquires a substantive right to be employed unless he is dismissed/ removed from service in accordance with law. As observed by me, Section 83 of the Act contemplates seeking prior approval in the event of

termination due to change of any other event also. In view of the judgments of the Supreme Court in Vengopal and Kulkarni's cases (supra), the Division Bench judgment of this Court in Vasavi Engineering College case (supra), is to be read as not including termination of an employee during the period of probation within the third phrase of Section 83. Therefore, where a private educational institution terminates the services an employee during the period of probation, there is no obligation to seek prior approval either u/s 79(1) or u/s 83 of the Act. The non-compliance with the provisions of Sections 79(1) and 83 of the Act, therefore, does not render the order of termination of probation illegal.

35. Therefore, on point No.2, it is held that the provisions of Section 79 of the Act are not attracted when a private educational institution terminates/ discharges the services of a teacher/Head master during the period of probation and, therefore, the order of termination of the petitioner without prior approval of the competent authority cannot be held to be illegal. In view of this, the order passed by the Regional Joint Director, the 2nd respondent herein, is vitiated by illegality.

36. Therefore, the first respondent was justified in setting aside the order of the 2nd respondent.

37. A reading of the impugned G.O., shows that the first respondent specifically referred to the orders passed by the 2nd respondent. Therefore, the order should be presumed to have been passed by the appellate authority after disagreeing with the view of the 2nd respondent. Even otherwise, the order passed by the 2nd respondent has been held to be illegal. Now if the order of the first respondent is set aside, the effect of the same would be to revive an illegal order passed by the 2nd respondent. It is well settled that if the effect of quashing an order under judicial review is to revive any other order which itself is an illegal order, this Court would be disinclined to quash the impugned order (See: Gadde Venkateswara Rao v. State of Andhra Pradesh. In such a situation, it is open for this Court to examine the original order as well as the appellate order and having regard to the totality of the circumstances, this Court is competent to pass appropriate orders. In view of the findings recorded by me on the points for consideration, it should be held that the order of termination terminating the services of the petitioner during the period of probation could not be held illegal for non-compliance with the provisions of Section 79(1) of the Act.

38. In the result, for the above reasons, the writ petition is dismissed. However, there shall be no order as to costs.