
(2004) 04 BOM CK 0013

In the Bombay High Court

Case No : Writ Petition No's. 2798 and 3017 of 2002

Hyderabad (Sind) National Collegiate Board and Another

APPELLANT

Vs

Navin Kumar Tiwari and Others

RESPONDENT

Date of Decision : 08-04-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Industrial Disputes Act, 1947 — Section 25F, 25FF, 25FFA, 25O, 32

Citation : (2004) 106 BOMLR 489

Hon'ble Judges : S.U. Kamdar, J

Bench : Single Bench

Judgement

S.U. Kamdar, J.—Both these writ petitions are filed challenging the order passed by the College Tribunal dated 11th July, 2002. The first petition is filed being Writ Petition No. 2798 of 2002 by the Management challenging the said order and the second petition being Writ Petition No. 3017 of 2002 has been filed by the employee also challenging the various findings given by the Tribunal in the impugned Judgment. For the sake of brevity in the present petition, the petitioners in Writ Petition No. 2798 of 2002 which is the college is hereinafter referred to as the petitioner-college and Shri Navin Kumar Tiwari the respondent No. 1 who was the Peon in the said college has been referred to as the respondent-employee in the present judgment. Some of the material facts are briefly enumerated as under :

2. Sometime in or about June, 1993 the respondent-employee was appointed as a Peon in one of the college run by the petitioner being K. C. College, Sometime in or about 1995 or thereafter the respondent-employee was transferred to Thadomal Shahani Engineering College, which is also run by the petitioner-Collegiate Board and is one of the Engineering College at Bombay.

3. In the examination conducted in December, 1996, for second year engineering for Semester IV in the faculty of Electronics Engineering, it was found that the marks of one of the students were tampered with and altered from 7 to 17

though the question specified was only of 10 marks. On the basis of the alleged act, the respondent-employee Peon was suspended on 4th July, 1997 pending enquiry by the petitioner No. 2 on the ground of serious misconduct under Chap. V- Conduct, Discipline and Appeals of the Standard Code Rules, 1984. The charge levelled against the respondent No. 1 was of falsification or tampering with paper or record of the University or College and committing any act involving moral turpitude. On 7th February, 1998 the charge-sheet was issued for the aforesaid misconduct under Rule 42(a), Rule 41 (3), Rule 41(10), Rule 42(c), Rule 42(m) and Rule 42(R) of the Standard Code Rules, 1994. The enquiry was conducted by the Enquiry Officer and concluded. Ultimately, on the basis of the said enquiry a show cause notice was issued to the respondent-employee on 15th February, 1999 to show cause why the proposed punishment should not be imposed against respondent-employee. By letter dated 5th May, 1999, the service of the respondent-employee was terminated.

4. The said termination order was challenged by the respondent-employee by filing an appeal being Appeal No. 22 of 1999 before the University and College Tribunal, The said appeal was rejected by the College Tribunal on 28th October, 1999. The respondent thereafter filed a writ petition in this Hon"ble Court being Writ Petition No. 581 of 2000. The learned Single Judge by an order and Judgment dated 11th July, 2000 which is now reported in 2002 C.L.R. 178 has held that the enquiry was not proper. Thus, the termination order dated 5th April, 1999 was set aside on the ground that the enquiry was conducted by the disciplinary authority who was the Principal of the college who was also a witness on behalf of the college in the enquiry proceedings. The college in the aforesaid Judgment agreed to reconsider the said matter afresh by another authority other than the Principal of the college. This Court accordingly set aside the order and remanded the matter back for fresh enquiry.

5. The petitioner states that pursuant thereto the said enquiry was conducted afresh and on conclusion of the same a show cause notice was issued to respondent No. 1 on 22th September, 2000 which was replied by the respondent-employee on 9th October, 2000 and ultimately a fresh termination order was passed by the newly constituted disciplinary authority on 3rd November, 2000. By the said order, the services of the petitioner were terminated.

6. The respondent No. I thereafter moved the College Tribunal under the provisions of Maharashtra Non-Agricultural Universities and Affiliated Colleges, Standards Code Rules, 1984 by filing an appeal which is numbered as Appeal No. 22 of 1999. The said appeal was heard by the College Tribunal on merits. The College Tribunal in its order & judgment dated 11th July, 2002, which is impugned in the present two writ petitions has held that the impugned order of termination dated 3rd November, 2000 is liable to be quashed and set aside and that the petitioner shall pay to the respondent-employee full back wages that are due to him w.e.f. 1st July, 1999 to 3rd November, 2000 minus the subsistence allowance already paid. It was further directed that in view of the fact that the

finding is given by Tribunal that the respondent No. 1 need not be reinstated, it was directed that the petitioner shall pay to the respondent-employee 75% of the six month's emoluments excluding transport allowance. The aforesaid amount has been directed to be paid within 90 days. The aforesaid findings are given by the learned Tribunal by inter alia holding that the evidence on record which has been assessed and considered by the College Tribunal to take action of dismissal against the respondent No. 1.

7. However, the College Tribunal found that there is non-compliance to the provisions of Sub-rule (2) of Rule 51 of the Maharashtra Non-Agricultural Universities and Affiliated Colleges, Standard Code Rules, 1984 (hereinafter referred to as the said rule). The said rule inter alia provides for issuance of one month notice, if the opinion is formed by the competent authority that as and by way of punishment, the employee has to be compulsorily retired or removed from service. Thus, the Tribunal though have given finding that there is a sufficient material for a dismissal of an employee, has held that by virtue of non-compliance of the said Sub-rule (2) of Rule 51 of the said Rules, the order of dismissal is invalid and liable to be set aside.

8. However, by relying upon Rule 61(2) of the said Rules which inter alia provides that in an event if the authority i.e. the petitioner herein decides not to reinstate the employee inspite of the order passed by the College Tribunal then in that event the petitioner will be entitled to termination of service by giving six months compensation, regard being had to loss of employment and possibility of getting or not getting suitable employment thereunder. In view of the aforesaid finding the learned Tribunal has passed the order as set out hereinabove. Against this order and judgment of the Tribunal, these two writ petitions are filed. In Writ Petition No, 2798 of 2002 the petitioner-college is challenging the finding of the learned Tribunal of non-compliance of the provisions of Rule 51(2) of the said Standard Code whereas in Writ Petition No, 3017 of 2002 the respondent-employee is challenging the order in so far as it does not direct, him to be reinstated in service with full back wages.

9. The learned Counsel appearing for the respondent-employee inter alia contended before me that the order passed by the College Tribunal is invalid and baseless for three reasons. Firstly, it is contended that once it has been found that the termination is illegal by virtue of non-compliance of Rule 51(2) of the Maharashtra Non-Agricultural Universities and Affiliated Colleges, Standard Code Rules, 1984 (hereinafter referred to as the said Standard Code) then in that event it is not open for the Tribunal to refuse to reinstate the respondent No. 1 in the said job. According to him, once the termination is found illegal, reinstatement and back wages must flow naturally out of the said order. It is further contended by the respondent-employee that the finding of the Tribunal that there is sufficient material on record to uphold the dismissal order passed by the College is erroneous and is required to be interfered with and such finding is arrived at by the Tribunal without going into the merits of the case at all. He

further contended that there were number of grounds raised in the memo of appeal before the Tribunal, and it has not gone into all the grounds which were agitated before the said Tribunal. He also contended that the Tribunal has considered the argument and material in respect of the validity of the enquiry in merely one paragraph and such approach of the Tribunal is not just and proper.

10. Thirdly and lastly, the learned Counsel for respondent-employee has contended that the petitioner-college had no jurisdiction to conduct the said enquiry at all. It was contended that the power to conduct the enquiry vests u/s 31 and Section 32(6) of the Maharashtra Universities Act, 1994 with the University and not with the College Authorities and on that basis it was contended that conducting of the enquiry by the college was without jurisdiction and was thus liable to be set aside.

11. As against this, the learned Counsel for the petitioner-management has contended that the finding of the Tribunal that by virtue of non-compliance of Sub-rule (2) of Rule 51 of the said Rules vitiates the entire inquiry and thus the respondent-employee is entitled to full back wages and reinstatement is unsustainable. It has been argued that non-compliance of sub-r. 2 of Rule 51 does not in any manner vitiate or invalidate the enquiry proceedings and the conclusion arrived thereon. It has been further contended that the requirement prescribed in Sub-rule (2) of Rule 51 being condition subsequent, is merely a procedural requirement and therefore, does not affect enquiry on merits.

12. Before dealing with the contention of the petitioner-management I shall deal with the contention raised of by the respondent-employee in the present matter. While adverting to the first contention I find that the provision of Rule 51(2) comes into action only after conclusion of the departmental proceedings and after coming to the decision that the employee is required to be dismissed from the job. The said Rule 51(2) reads as under :

(2) The competent authority, after completing the procedure of departmental enquiry, comes to the conclusion that the employee should be compulsorily retired or removed from the service, it shall give three months' notice in case of employee in Class I, Class II or Class III, service and one month's notice in case of an employee in Class IV service.

13. The contention that merely because the subsequent notice prescribed under Rule 51(2) is not issued, the order of termination which is otherwise legal and valid should be treated as invalid and therefore, the entire proceeding must fail and respondent-employee should be entitled to reinstatement with full back wages, in my view has no merits. Non issuance of a notice under Rule 51(2) does not in any manner whatsoever vitiate the conduct of the enquiry by the College Board and therefore I do not find any substance in the contention raised by the learned Counsel for the respondent No. 1 that mere non compliance with the Rule 51 (2) which is the condition subsequent to the conduct of the enquiry would vitiate the enquiry, I thus reject the aforesaid contention of the respondent

No. 2.

14. The 2nd contention of the respondent-employee that the College Tribunal has not applied its mind to the various aspects of the matter, which was raised before the College Tribunal, I find that the said contention equally has no substance. The respondent No. 1 was found guilty of alteration of the marks in the answer sheet of one of the students whereof the documentary evidence as well as oral evidence was produced by the college in the course of departmental enquiry. This evidence has been appreciated and or considered by the College Tribunal in para 15 of the said Judgment. The College Tribunal found on appreciation of the evidence that there is sufficient material before the petitioner-management to come to the conclusion that there is an alteration in the marks of one of the students, I have also looked into the original answer sheet, which was produced before me by the petitioner-college. Plain look at the said marks obviously indicates the ex-fade interpolation. Furthermore, it is surprising that the question containing 10 marks has been altered as the students had received 17 marks to the said question. Apart there from, the contention of the learned Counsel of the respondent-employee that the mark sheet was in custody of the principal and therefore respondent-employee is not responsible cannot be accepted. On perusal of the judgment, I find that the Tribunal has considered the material while arriving at the finding that the enquiry is legal and valid. This is a finding of fact. I do not find it appropriate to exercise writ jurisdiction under Article 226 of the Constitution of India to interfere with such finding of fact arrived at by the Tribunal. I also do not find any perversity in the approach or finding recorded by the Tribunal. I am therefore, of the opinion that the argument of the learned Counsel for the respondent-employee has no merits and therefore, the same is liable to be rejected.

15. The 3rd contention raised by the learned Counsel for the respondent No. 1 pertains to the provision of Sections 31 and 32(6) of the Maharashtra Universities Act, 1994. For considering the aforesaid contention, it is necessary to set out the provisions of the said Section 32(6) :

32(6)(a). In order to investigate and take disciplinary action for mal practices and lapses on the part of candidates, paper setters, examiners, moderators, referees, teachers or any other persons connected with the conduct of examinations, the Board of Examinations shall constitute a Committee of not more than five persons of who one shall be Chairman;

(b) Such a Committee shall submit its report and recommendations to the Board of Examinations which shall take disciplinary action in the matter as it deems fit.

Relying upon the aforesaid provisions, the learned Counsel has contended that the enquiry conducted by the college ought to have been conducted by (.he University or the Board of Examiners of the University under aforesaid act and the provision of Standard Code has no application. Firstly, this point was never raised before the Enquiry Officer nor it has been raised before the College

Tribunal and therefore the College Tribunal has rightly not considered the same. Apart from the fact that on this ground alone, the respondent No. 1 is not entitled to raise the said issue in this petition, I find otherwise also there is no merit in this contention. The provisions of Maharashtra Universities Act, 1994 and particularly reliance placed on Section 32(6) did not pertain to or apply in cases of conducting of the departmental enquiry by the college for misconduct of its employees. The power given u/s 32(6) with the Universities or Board of Examiners under the Maharashtra Universities Act, 1994 is independent. This power can be exercised by a University if any malpractices are found by the University in conducting their exams. This power do not in any manner affect the power of college authority to conduct the departmental enquiry under Standard Code if the college authority has found that there is misconduct on the part of the employee in their college. The learned Counsel for the respondent No. 1-employee has thereafter relied upon the Judgment of the Supreme Court in the case of Laxman Dundappa Dhamanekar and Another Vs. Management of Vishwa Bharata Seva Samiti and Another, and has contended that the Standard Code is a subordinate legislation to the provision of Maharashtra Universities Act, 1994 and once there is a provision that enquiry u/s 31 and Section 32(6) of the said Maharashtra Universities Act, 1994 than the Code will not be applicable. I do not see any conflict between the provisions of Section 31 and Section 32(6) with that of the Standard Code. The provisions of Section 31 and Section 32(6) of the Maharashtra Universities Act, 1994 empowers the University to conduct disciplinary proceedings in the cases of misconduct in the course of University examination whereas the Standard Code gives the College the independent power to conduct its own enquiry as there is a master-servant relationship between the petitioner-college and the respondent No. 1-employee. In view of the aforesaid, I do not find any substance in the contention of the learned Counsel for the respondent No. 1-employee particularly based on reliance upon the Judgment of the Supreme Court in the case of Laxman Dundappa Dhamanekar, (supra). Apart therefrom, I also find that the issue of validity of an enquiry was a subject matter between the parties in an earlier round of litigation which culminated in an order of Chandrachud, J. which has been referred to hereinabove. The learned Judge has infact set aside the enquiry which was conducted under the Standard Code on the ground that the principal being one of the witnesses should not have been the disciplinary authority in present case. It was not the case of the respondent No. 1-employee either before this Court in an earlier round of litigation or before the College Tribunal under the impugned order that the Standard Code did not apply to his case and that enquiry ought to be conducted under the Maharashtra Universities Act, 1994. In view of the aforesaid reasons, I find no merits in any of the contentions raised in the present petition by the respondent No. 1-employee.

16. This leads me to the argument of the learned Counsel for the petitioner in Writ Petition No. 2798 of 2002. The learned Counsel appearing for the petitioner in said writ petition has inter alia contended that in so far as the provisions of

Rule 51(2) is concerned, compliance thereof is not mandatory but is discretionary. It has been further contended that the finding of the learned Tribunal that the order is not complied with and therefore the order is illegal and invalid is without any authority and totally misplaced. On the other hand, the learned Counsel for respondent-employee has contended that the provisions of Rule 51(2) are mandatory in nature. He has further contended that if the provisions prescribed the exercise of power in particular manner then it ought to be exercised only in that manner or not at all. Thus it was his contention that non-compliance with the provisions of Rule 51(2) would make the entire proceedings invalid and the order of termination totally invalid and illegal and liable to be quashed and set aside. In support of the said argument, the learned Counsel for the respondent-employee has relied upon certain judgments. Firstly, he relied upon the Judgment of the Supreme Court of India in the case of Senior Superintendent, R.M.S., Cochin and Another Vs. K.V. Gopinath, Sorter, in which it has been held by dealing with the words "termination forthwith by payment" that the requisite amount in terms of rule must be paid into the hands of the employee or made available to him at the same time as he was served with the order. It has been contended by relying on the aforesaid Judgment that non-compliance of such condition would make the order of termination invalid. In the aforesaid Judgment, the Hon'ble Supreme Court of India has held that if there is a termination to be effective, there has to be a payment simultaneously in view of the rule quoted therein. The aforesaid Judgment of the Hon'ble Supreme Court of India has no application on the facts of the present case as in the present case, the question of issuance of notice arises only subsequent to the finding given of removal or compulsory retirement pursuant to the concluded enquiry.

17. The learned Counsel for respondent-employee has further cited the judgment in the case of Jaipur Zilla Sahakari Bhoomi Vikas Bank Ltd. v. Shri Ram Gopal Sharma and Ors. 2002 (1) C.L.R. 789 inter alia, based on the provisions of Section 33(2)(b) of the Industrial Disputes Act, 1947 which inter alia requires that if any person is dismissed during the pendency of the proceedings or industrial dispute in the Court then prior to the dismissal order being given effect to, a permission is required to be obtained from the Industrial Court for discharging or dismissal of the said employee as also payment of one month wages. It has been further held in the said Judgment that unless the approval is granted by the Industrial Court, such termination order is not effective. While considering the aforesaid provision, the Supreme Court in para 14 of Jaipur Zilla Sahakari Bank's case (supra) held as under :

Where an application is made u/s 33(2)(b) proviso, the authority before which the proceeding is pending for approval of the action taken by the employer has to examine whether the order of dismissal or discharge is bona fide; whether it was by way of victimization or unfair labour practice; whether the conditions contained in the proviso were complied with or not, etc. if the authority refuses to grant approval obviously it follows that the employee continues to be in service

as if the order of discharge or dismissal never had been passed. The order of dismissal or discharge passed invoking Section 33(2)(b) dismissing or discharging an employee brings an end of relationship of employer and employee from the date of his dismissal or discharge but that order remains incomplete and remains inchoate as it is subject to approval of the authority under the said provision. In other words, this relationship comes to an end de jure only when the authority grants approval. If approval is not given, nothing more is required to be done by the employee, as it will have to be deemed that the order of discharge or dismissal had never been passed, consequence of it is that the employee is deemed to have continued in service entitling him to all the benefits available. This being the position, there is no need of a separate or specific order for his reinstatement. But on the other hand, if approval is given by the authority and if the employee is aggrieved by such an approval, he is entitled to make a complaint u/s 33A challenging the order granting approval on any of the grounds available to him. Section 33A is available only to an employee and is intended to save his time and trouble inasmuch as he can straightaway make a complaint before the very authority where the industrial dispute is already pending between the parties challenging the order of approval instead of making efforts to raise an industrial dispute, get a reference and thereafter adjudication. In this view, it is not correct to say that even though where the order of discharge or dismissal is inoperative for contravention of the mandatory conditions contained in the proviso or where the approval is refused, a workman should still make a complaint u/s 33A and that the order of dismissal or discharge becomes invalid or void only when it is set aside u/s 33A and that till such time he should suffer misery of unemployment in spite of statutory protection given to him by the proviso to Section 32(2)(b). It is not correct to say that where the order of discharge or dismissal becomes imperative because of contravention of provision to Section 33(2)(b), Section 33A would be meaningless and futile. The said section has a definite purpose to serve, as already stated above, enabling an employee to make a complaint, if aggrieved by the order of the approval granted.

18. In the aforesaid judgment the Hon'ble Supreme Court of India has held that the provisions of Section 33(2)(b) would make dismissal order ineffective till and until the necessary requirement of approval is complied with. If the said analogy is applied in the present case then also the order issued would not become illegal by virtue of non-compliance of Rule 51(2). At the highest it would be ineffective till the said notice is given in compliance with Rule 51(2).

19. On the other hand the learned Counsel for the petitioner-management has relied upon the judgment of Poonuasi and Ors. v. Crown Silk Weaving Industries. While considering the provisions of Section 25FFA, this Court has held in para 6 as under :

6. On a careful consideration of the object and scheme of these two sections, it appears that notice u/s 25FFA is not a condition precedent for closure of an undertaking and non-compliance therewith cannot have the effect of rendering

the closure illegal and non est from its very commencement. This interpretation gets support from the language of Section 25F which lays down the conditions precedent for retrenchment of a workman. This section, as it stood at the material time, is in the following terms :

"25F. Conditions precedent to retrenchment of workmen.- No workmen employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until -

(a) The workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid In lieu of such notice, wages for the period of the notice :

Provided that no such notice shall be necessary, if the retrenchment is under an agreement which specifies a date for the termination of service;

(b) The workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months, and

(c) Notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.

Section 25-O of the Act, which was inserted with effect from 27th October, 1981 also supports the above interpretation. This section imposes an obligation on an employer who intends to close down an undertaking of an industrial establishment to apply to the appropriate Government for permission at least 90 days before the date on which the intended closure is to become effective. A copy of such notice is also required to be serviced simultaneously on the representatives of the workmen. Sub-section (7) of Section 25-O specifies the consequences of the refusal of the Government to grant permission for closure. It provides that in such an event, the closure of the undertaking shall be deemed to be illegal from the date of closure and the workmen shall be entitled to all the benefit under any law for the time being in force as if no notice had been given to him. As indicated above, this section came into being subsequent to the closure of the undertaking in question in the instant case and as such is not available to the workmen in the present writ petition. This section however gives, an indication in regard to the legal position prior to its incorporation. Prior to insertion of Section 25-O, the only requirement for closure was contained in Section 25FFA which does not require an employer to apply for permission of the appropriate Government to close down its undertaking. What is required in that case is only to give sixty days' notice to the appropriate Government of the employer's intention to close down an undertaking. No consequence of failure to give such a notice has been set out In Section 25FFA as has been done in Sub-section (7) of Section 25-O of the Act. This distinction in the scheme of these two sections viz. Section 25FFA and Section 25-O which has been made applicable to the State of Maharashtra by the State of Maharashtra Act No. 3 of 1982, is

perceptible and material. The requirement of making an application to the appropriate Government 90 days before closing down any undertaking contained in Section 25-O which is applicable in Maharashtra since 27 October, 1981 is a condition precedent to the closure and non-compliance therewith is visited with the consequence contained in Sub-section (7) thereof i.e. the closure shall be deemed to be illegal from the date of the closure and the workmen shall be entitled to all the benefits as if no notice had been given to them. Unlike Section 25-O, the requirements of Section 25FFA are not mandatory. The power of the employer to close down an undertaking is not subject to prior permission of the appropriate Government. It simply requires the employer to give 60 days' notice of the intended closure to the appropriate Government stating the reasons for the same. Failure to do so would not render the closure illegal from its inception. It may render the employer liable to pay wages of 60 days to the workmen. Reference may be made, in this connection, to the decision of the Supreme Court in *Avon Services Production Agencies (P) Ltd. Vs. Industrial Tribunal, Haryana and Others*, wherein on comparison of the language employed in Section 25F and Section 22FFF(1) of the Industrial Disputes Act, it has been held (at page 178) as under :

A comparison of the language employed in Section 25F and Section 25FF(1) would bring about in bold relief the difference between the phraseology employed by the Legislature and its impact on the resultant rights of the workmen. u/s 25F a workman employed in an industrial undertaking cannot be retrenched by employer until the payment is made as provided in cls. (a) and (b) of Section 25FFFU) provides that the workman shall be entitled to notice and compensation in accordance with the provisions of Section 25F if the undertaking is closed for any reason, as if the workman has been retrenched.

It is thus clear that mere contravention of Section 25FFA by the employer would not render the closure of an undertaking illegal or void and will not entitle the workman to an order of reinstatement. The workmen in such a case may be entitled to wages for sixty days in lieu of notice. Non-compliance with the requirement of this section therefore, cannot be equated with non-fulfillment of a condition precedent to the passing of an order.

20. On the aforesaid consideration on the legal aspect and particularly in view of my finding that the non-compliance of Sub-rule (2) of Rule 51 did not make the initial order of termination illegal, invalid or non est but it only makes the same ineffective till and until there is a compliance to Sub-rule (2) of Rule 51 of the said Rules. I am of the view that the contention raised by the learned Counsel for the respondent-employee has no merits. I am also of the view that the compliance with Sub-rule (2) of Rule 51 being condition subsequent, it can be complied at any stage subsequently but till such compliance, the order of removal of employee would be ineffective and the employee would be deemed to be in service. Once there is a compliance as per the rule, the order of removal or compulsory retirement as the case may be, would become effective and

operative and the service of the respondent No. 1-employee would stand terminated.

21. In the present case, I find that the petitioner-management as a matter of abundant precaution to comply with the requirement under Rule 51(2) has tendered the wages in lieu of the notice period of one month by letter dated 15th December, 2001 during the pendency of the said appeal. Thus, in my view the said Rule 51(2) has been complied with by notice dated 15th December, 2001, In the aforesaid circumstances, I am of the opinion that the non-compliance of Rule 51(2) of the said Standard Code would not make the dismissal order passed by the authority invalid but it would be ineffective till and until such compliance has been effected by the petitioner-college. I am also not impressed with the argument that compliance of Rule 51(2) is discretionary and not mandatory. The intention of providing Rule 51(2) is to provide the breathing period to an employee to find out the alternate employment and in view thereto the intention of the Legislature cannot be defeated by holding that the compliance to the said rule is discretionary. I therefore hold that Rule 51(2) is required to be complied with but non-compliance thereto makes the said order of dismissal only ineffective and not invalid.

22. In the present case, such compliance having been done on 15th December, 2001 by giving a notice, which is sent to the petitioner, and forming a part of the record of the College Tribunal, the services of the respondent No. 1 here came to an end with effect therefrom. Thus, the petitioner shall make the payment to the respondent No. 1 of wages upto the date of 15th December, 2001 and in addition thereto the payment of one month wages for a notice period in accordance with Rule 51(2) of the said Standard Code. In view of what is stated hereinabove in so far as the Writ Petition No. 3017 of 2002 is concerned which has been filed by the respondent-employee, the same is dismissed. In so far as the writ petition filed by the petitioner-college is concerned being Writ Petition No. 2798 of 2002, the same is allowed. The order of the Tribunal dated 11th July, 2002 is quashed and set aside and substituted by the following order :

23. The petitioner-management shall be liable to make payment of wages to the respondent No. 1-employee unto 15th December, 2001 and further liable to make payment of one month salary in compliance with Sub-rule (2) of Rule 51 of the said Rules. On making payment of the aforesaid amount, the service of. the respondent-employee would stand terminated. The petitioner-college shall make the payment of the aforesaid amount to the respondent No. 1 -employee on or before 30th June, 2001. The petitioner is disposed of accordingly. However, there shall be no order as to costs.

24. Parties to act on a copy of this order duly authenticated by the Court Stenographer of this Court.