

(2005) 03 KAR CK 0041

In the Karnataka High Court

Case No : Writ Petition No's. 33884 and 36280 of 1998 and etc

K.G. Devraj and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 18-03-2005

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16, 22, 311

Citation : (2005) ILR (Kar) 2057 : (2005) 4 KarLJ 239 : (2005) 2 KCCR 105 SN

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : Vigneshwar S. Shastri and N.R. Nayak and Associates, for the Appellant; Krishna S. Dixit, for R1 and R2 and Ashok Haranahalli, CGSC for R-1 to 5, for the Respondent

Judgement

N.K. Patil, J.—In all these petitions, the petitioners have questioned the legality and validity of the orders passed on various dates by the competent authority, terminating their services from the respective posts held by them as Instructions/Lecturers/Technicians in BSF Institute of Technology with a further direction, directing respondents to give all the benefits, emoluments, salaries and other legal benefits flowing there from to these petitioners.

2. The brief facts of the case are that, petitioners herein were appointed as Instructors/Lecturers/Technicians in the Border Security Force (BSF) Institute of Technology, which is affiliated to AICTE. In pursuance of the notification issued by the competent authority, these petitioners have attended their interviews and thereafter, they have been appointed. Accordingly, the appointment orders have also been issued subject to certain 12 conditions. Thereafter, probationary period has been declared by the competent authority in respect of all the petitioners in first six petitions, but so far as petitioner in Writ Petition No. 34489/1999 is concerned, he has been appointed purely on temporary basis and his probationary period is not confirmed. The reason assigned for terminating the services of these petitioners by the respondents is that, the BSF Education Fund

Society, New Delhi has taken a decision to discontinue the Air Craft Maintenance Engineering Course ("AME" for short) for the academic year 1998-99 on account of poor response from the candidates in respect of the said course. As a result of the same, it was not possible to utilise the services of these petitioners gainfully. Therefore, after obtaining necessary approval from the competent authority, the respective courses in which these petitioners have been appointed and were working, have been abolished. As a consequence thereof, the respective posts have also been abolished. Hence, the competent authority, on the ground that, there are no takers for the said course and that there is no demand from the candidates for the said course, taking into consideration the financial constraints and maintenance of the infrastructure and the libraries etc, has abolished the respective posts held by these petitioners. Consequently, the termination orders have been issued in accordance with the conditions imposed in the memorandum of appointment order issued to these petitioners. In view of unilateral decision taken by the competent authority for terminating the services of these petitioners, without conducting enquiry and without affording any opportunity and in gross violation of the principles of natural justice, these petitioners felt necessitated to present the instant writ petitions.

3. The principal submission canvassed by Sri. Vigneshwar Shastri, learned counsel appearing for all the petitioners except petitioner in Writ Petition No. 34498/1999 and Sri. N.R. Naik, learned counsel appearing for petitioner in Writ Petition No. 34498/1999 is that, the termination of services of petitioners are highly arbitrary, illegal and are in total violation of Article 14 of the Constitution of India. Further, Sri. Vigneshwar Shastri vehemently submitted that, since the services of the petitioners have been confirmed, they are all entitled for protection of their services/employment and as such their termination under the guise of abolition of posts is arbitrary and violative of Article 14 of the Constitution of India. He submitted that, if the order of termination is perused carefully, it is clear that, it is not abolition of post but the same is "termination simplicitor" which is passed in clear violation of the principles of natural justice. If the abolition of posts were to be made, then, there must have been approval from the competent authority and the same must be done in good faith and not as a mask of some penal civil consequences.

4. Further, he submitted that, the respondents have not made any sincere efforts to give the petitioners alternative employment in the available vacancies wherein, most of the BSF civilians are working and petitioners could have been accommodated in the vacancies available in similar institutions run by the BSF at Thakanpur (Gwaliyar), Delhi and BSF Air Wing. Further, he vehemently submitted that, protection of employment is available to the employees who are working even in Government undertakings as held by the Hon"ble Supreme Court of India in several judgments. To substantiate the above said submissions, he placed heavy reliance on the judgment of the Apex Court in the case of Parshotam Lal Dhingra Vs. Union of India (UOI), ; MOTIRAM v. N.E. FRONTIER RAILWAYS AIR 1964 SC 600 and regarding the submission that the decision taken should be in

good faith and not as a mask of some penal action, he replied upon the Apex Court decision in the case of M. Ramanatha Pillai Vs. The State of Kerala and Another, So far as protection of employment as envisaged under Article 311 of the Constitution of India, he placed reliance on another Supreme Court decision in the case of Uptron India Limited Vs. Shammi Bhan and Another, Further he pointed out that, the respondents have not taken into consideration the civil consequences that follow where, all these petitioners have become age-barred and they cannot get any alternate jobs since they are skilled and experts in their respective courses. He submitted that, when the respondents are running several Institutions through out India, the services of these petitioners could have been utilised or the petitioners might have been accommodated in other posts which are equivalent to the posts held by these petitioners. The employment of these petitioners is the only source of income for their livelihood and the entire family members are dependent on them. This aspect of the matter has not at all been looked into nor considered under Articles 21, 38 and 43 of the Constitution of India including the directive principles of State policy. Therefore, the impugned orders, terminating the services of these petitioners are liable to be set aside and appropriate direction may be issued to respondents to continue the services of the petitioners with all benefits to which they are entitled.

5. Per contra, the standing counsel appearing for first respondent-Union of India and learned counsel appearing for respondents 2 to 5, inter alia, contended and substantiated that, the impugned orders passed by respondents are in strict compliance of the relevant provisions of the Institute and that too, the said decision has been taken after prior approval from the competent authority. To substantiate their submission, they have taken me through the memorandum (appointment order) issued to petitioners and pointed out condition No. 3, wherein they have made it explicitly clear that, the service is terminable with three months' notice or three months' salary in lieu thereof from either side and without prejudice to para 10 therein. Further, Sri. Krishna S. Dixit, learned counsel for Union of India vehemently submitted that, the bona fide act of abolition of posts is taken on the ground that, there is poor response from students for taking admission to the said course, which is now abolished and as a consequence thereof, the posts in the said course have been abolished. Hence, in view of abolition of the said course and consequently the respective posts, the consequence that naturally follows is the termination of services of these petitioners. As a matter of fact, the respondents have taken a specific stand in their objections that, they have made all sincere efforts to accommodate these petitioners in other Institutions run by them, but due to non availability of vacancies, the services of these petitioners could not be utilised gainfully and they had no other option except to terminate their services. To substantiate the said stand, the learned counsel placed heavy reliance on the judgment of the Apex Court in the case of S.S. Dhanoa Vs. Union of India and others, and pointed out that, creation and abolition of post is a prerogative of executive and abolition of post by the competent authority is an exigency of service and consequent

termination of service cannot be challenged on the ground of illegality. Hence, he submitted that, it is not open for the petitioners to challenge the termination of their services on the ground of illegality. Further, in response to the contention taken by the learned counsel for petitioners for accommodating the petitioners in other Institutions, relying on the settled law laid down by the Supreme Court in case of K. Rajendran and Others Vs. State of Tamil Nadu and Others, he submitted that, in spite of their sincere and best efforts, the authorities could not accommodate the petitioners elsewhere. To substantiate the said stand, he submitted that, in view of the observations made by the Apex Court in the said case at paragraph 34, wherein it is held that, the question whether a person who ceases to be a Government Servant according to law should be rehabilitated by giving an alternative employment is, as the law stands today, a matter of policy on which the Court has no voice and is purely a prerogative of the appointing authority to take a decision having regard to the financial constraints and the infrastructure and therefore, the course and consequently, the posts are abolished after taking necessary permission from the competent authority. Therefore, he submitted that, there is no substance in the submission made by the learned counsel for petitioners that, the respondents have not made sincere efforts for accommodating these petitioners elsewhere in the other Institutions run by the respondents.

6. Further, the learned counsel appearing for respondents 2 to 5 substantiated and submitted that, the impugned orders passed by respondents are in strict compliance of the relevant provisions of the Institute and no error or illegality as such has been committed by the respondents nor they have violated any Articles 14, 16 and 22 of the Constitution of India. Further, he has taken me through the stand taken by them in their objections at paragraph 7 wherein it is stated that, during the academic year 1997-98, ten students were admitted to the course and out of them, four withdrew their names and the remaining six students continued their course, but at the end of 1997-98 session, they applied for change of branch and joined Electronics and Communication. Further, it is the case of respondents that, the respondents were not getting any response from the students for AME course for the reason that, those who had graduated the said course were finding it difficult to get jobs; many of the new NEPC Air Lines, East West Airlines came to be closed and many of the new promised Air Lines did not come up. Therefore, he submitted that, this is the ground reality and the said decision has been taken in good faith after obtaining necessary permission/ approval from the competent authority and the same is well within the terms and conditions of appointment order given to these petitioners. Learned counsel appearing for respondents placed heavy reliance on condition No. 3 of the appointment order issued to these petitioners, as stated supra. Further, to substantiate his submission, he placed reliance on the judgment of the Supreme Court in the case of Notified Area Council and Another Vs. Gahar Mohammad and Another, and submitted that, the position is well settled that, the abolition of posts is within the power of the employer and any decision in that regard is not

available to be interfered with by the Court unless it is held to be vitiated by malafides or is arbitrary. Therefore, the petitioners have not made out any case before this Court on the ground of mala fides or arbitrary or unreasonableness. Further, relying upon a decision of the Supreme Court in the case of State of Haryana Vs. Shri Des Raj Sangar and Another, he pointed out that, whether a post should be retained or abolished is essentially a matter for the Government to decide, and as long as the decision is taken in good faith, it could not be set aside by the Court. In the instant case, the authorities, after taking into consideration the ground reality and in view of poor response to the course from the students, were constrained and had no other option except to take a decision for abolition of posts and pass consequential termination orders, terminating the services of the petitioners and the same are in strict compliance of the terms and conditions of appointment order issued to petitioners. Therefore, he submitted that, the impugned orders passed by respondents are in strict compliance of the mandatory provisions of the BSF Institute of Technology and its Code. Further, the learned counsel drew my attention to one of the important aspects of the matter that, the Institution under which these petitioners were appointed is purely an un-aided Institution and the said Institution is headed by a Committee, which is supposed to run the Institute within the BSF Education Fund and it does not have any member from the Ministry of Human Affairs or representative from AICTE or DGCA. The BSF Education Fund Society consists of the Chairman, Vice Chairman, and five other members, from the BSF and they are supposed to maintain the Institute within the BSF Education Fund and the said Fund is collected from the Officers/ employees of the BSF only. Only on two earlier occasions, some incentive was given by the then Home Ministry. Therefore, he submitted that, since the Institute is purely an un-aided Institute and is maintained by the funds collected from BSF personnel, the petitioners cannot seek for continuation of service inspite of abolition of course and consequently the posts. Hence, the instant writ petitions filed by petitioners are liable to be rejected at the threshold; nor the petitioners have made out any good grounds for interference in the impugned orders passed by respondents.

7. After hearing the learned counsel for petitioners, learned counsel for respondents, after careful perusal of the material available on record threadbare, and after considering the rival contentions advanced by learned counsel for petitioners and learned counsel for respondents, the points that arise for consideration in the instant writ petitions are:

- (i) Whether the termination of services of petitioners is in accordance with law?
- (ii) Whether the abolition of posts is done in good faith and in strict compliance of the terms and conditions of appointment order issued to petitioners?

8. Re. Point (i):

To understand better, it is worthwhile to mention the particulars of these petitioners in a tabular form which are as follows:-

Sl. No

Name

Age Yrs.

Qualification

Expenence Yrs.

Date of Joining

Date of confirmation

Total no of service

Date of termination

1

K.G Devaraj

51

Dip. in Mechanical, Technology, Degree in Mechanical Engg.

15

1.8.1992

1.8.1994

5 yrs 11 months

1.7.1998

2

P.G Thomas

51

Degree in Mechanical Engg. Dip. in Mechanical

15

19.10.92

19.10.93

6 yrs

1.11.98

3

Ashok Singh Sunhal

38

B.E. (Aero) Advance Training in Mech. Engg. Certificate in Proficiency

3 yrs & 8 yrs

25.11.93

25.11.94

5 yrs

1.2.99

4

K.T. Kedanuri

62

Dip. in Techn. M.A. in Pol. Sc. & Admn.

23

16.10.92

16.10.93

6 yrs, 03 months

1.2.1999

5

Vincilian P.S.

36

B. Tech (Aero) B.Sc. (Mathematics) Diploma in Computers Master of Computer appln. (MCA)

21.10.92

21.10.1993

6 yrs. 03 month

1.2.1999

6

Abdul Quyyum

62

Dip. in Elec. Engg. Dip. in Instrument Technology B. A.

20 yrs. Ex-serviceman

1.7.1994

1.7.1995

4 yrs 09 months

22.5.1999

7

M.P. Mathew

35

ITI in Welding Dip. in Mech. Engg.

6.10.92

6.10.93

6 yrs. 11 months

24.9.1993

8

L.V. Janamatti

39

ITI in Fitting Comp. Application

23.8.1993

23.8.1994

6 yrs. 11 months

24.9.1999

9

V.J. Babu

16.10.92

7 yrs.

24.9.1999

It is not disputed that, these petitioners do not have requisite qualification for appointment to their respective posts as Instructors/ Lecturers/Technicians in BSF posts as Instructors/Lecturers/ Technicians in BSF Institute of Technology. In pursuance of the notification issued, these petitioners have applied for their respective posts and they have been interviewed and have been selected. The appointment orders have also been issued. Thereafter, their appointments have been confirmed and probationary period has been declared. Be that as it may. The reason behind abolition of these posts is that, for the academic year

1998-99, no students applied for admission to AME course and only ten students who were admitted during the year 1996-97, their course was supposed to come to an end by July 1999. During the academic year 1997-98, few students have taken admission and thereafter, have immediately taken transfer to other courses, in the said Institution and in view of non admission of students to the said course, the respective posts attached to the said course have been abolished. It reveals from the stand taken by respondents that, it is beyond the control of the respondents since the said Institute is purely and un-aided Institute and is run by the BSF Education Fund. It is clearly mentioned in condition No. 3 of the appointment orders issued to petitioners, appointing them to the respective posts as Instructors/Lecturers/Technicians, in unequivocal terms that, the service is terminable with three months" notice or three months" salary in lieu thereof from either side and without prejudice to para. 10 therein and it is pertinent to note that, the appointing authority further reserved the right to terminate the services of the petitioners before the expiry of the stipulated period of three months" notice by making payment of pay and allowances for the un-expired period of notice, by paying three months" salary in lieu of three months" notice. Accordingly, in view of abolition of the said course and consequently the posts, upon obtaining necessary approval from the competent authority, the impugned termination orders have been issued to these petitioners by paying three (SIC) salary in lieu of three months "notice as per the BSF Education Code and also as per the offer of appointment. It is specifically spelt out in the impugned orders that, the BSF Education Fund Society, New Delhi has taken a decision to discontinue the Aircraft Maintenance Engineering course with effect from 1998-99 on account of poor response from the candidates, and as a result, it has not been possible to utilise the services of these petitioners gainfully. The said reasons assigned by the authority is based on the ground reality stated in the statement of objections filed by respondents and as rightly pointed out by learned counsel for respondents, as stated supra. As rightly pointed out by Sri. Krishna Dixit, learned counsel appearing for Union of India, the creation and abolition of post i s prerogative of executive and abolition of post is an exigency of service and consequent termination of service cannot be challenged on ground of arbitrariness or illegality. A similar occasion arose for the Apex Court while considering the termination of services of the Election Commissioner in view of abolition of posts in the case of S.S. DHANOA v. UNION OF INDIA AND OTHERS (Supra) In the said case, the Apex Court held that, the creation and abolition of post is the prerogative of the executive and Article 324(2) leaves it to the appointing authority to fix and appoint such number of Officers as he may from time to time determine. The power to create the posts is unfettered. So also is the power to reduce or abolish them. If therefore, the appointing authority finding that there was no work for the officers or that the officers could not function, decided to abolish the posts, that was an exigency of the Office held by the Officer. Therefore, it being a clear case of abolition of post, the termination of services of the officers as a consequence thereof. Hence, the termination of service is not: open to challenge on the

ground of illegality. In the instant case also, the authorities have specifically given cogent reasons for abolition of the said course and consequently the posts and as a further consequence thereof, termination of services of these petitioners. In view of cogent reasons and clear finding given by the authorities in the impugned orders, and since the same are in consonance with the terms and conditions of the offer of appointment, in my considered view, there is no arbitrariness, error or illegality in the same. Therefore, there is no force in the submission made by the learned counsel for petitioners in this regard.

9. Further, in the case of NOTIFIED AREA COUNCIL, PIPILI AND ANR. (supra), the Supreme Court has held that, the position is fairly well settled that, continuance or abolition of posts is within the power of the employer and any decision in that regard is not available to be interfered with by the Court unless it is held to be vitiated by mala fides or is arbitrary and from the material available on record, it is clear that, on both courts, the High Court fell into error. We do not find that the High Court took into consideration any material on record to come to the conclusion that the resolution was passed by NAC, dispensing with the engagement of daily-wage workers, was vitiated on any count. In view of the facts and circumstances of the case, as stated above and in view of the well settled law laid down by the Apex Court, referred above, I do not find any error or illegality as such in the impugned orders nor interference in the impugned orders passed by respondents is called for.

Re. Point (ii):

10. After careful perusal of the impugned orders passed by respondents, terminating the services of the petitioners, it is manifest on the fact of the said orders that, the authorities have made it amply clear that, the BSF Education Fund being the Apex body has taken the decision to discontinue the Aircraft Maintenance Engineering course with effect from academic year 1998-99 on account of poor response from the candidates and as a result, it has not been possible to utilise the services of the petitioners gainfully. Further it has been spelt out in paragraph 2 of the termination orders in unequivocal terms that, "the services are terminated with effect from 1st November 1998 as approved by competent authority". Regarding the question as to whether the said decision is taken in good faith and not as a mask of some penal action, learned counsel appearing for petitioners, except making submission vehemently that the respondents have not taken any permission from the competent authority, has not produced any authenticated document to establish that, the respondents have not taken any permission from the competent authority. As a matter of fact, in the termination orders, as stated above, it has been specifically referred in paragraph 2 "as approved by the competent authority". Therefore, the submission made by the learned counsel for petitioners cannot be accepted. The respondents 4 and 5 have filed detailed statement of objections and have stated in unequivocal terms that, the reason behind the decision of abolition of posts is only due to poor response from the students to the AME course and also due to

the fact that those students who had graduated were finding it difficult to get jobs and many of the new Air lines like NEPC and many of the new promised Aircraft did not come up. Added to that, for the academic year 1997-98, out of ten students who were admitted, four students withdrew their admission and remaining six students continued their course, but, at the end of the academic year, applied for change of branch and joined the Electronics and Communication. They have produced a copy of the communication allowing the students for such change of branch dated 15th March 1998. As to whether the decision taken is in good faith, it is pertinent to note that, in view of the above situation, it was decided to start a course in mechanical subject instead of AME course vide letter dated 2nd March 1998 and to examine the feasibility or otherwise of utilising the service of these AME staff, a Board of Officers consisting of two lecturers and the Administrative Officer was constituted on 17th August 1998. The said Board was of the opinion that, the services of the petitioners cannot be utilised elsewhere and the proceedings of the board is also produced along with the statement of objections. Therefore, there is no doubt regarding the fact that, every possible effort was made by authorities to utilise the service of these petitioners, but, the situation was beyond their control. The said decision was taken in view of several factors, including the financial constraints, maintenance of the staff members, libraries and more so because of the poor response from the students for taking admission to study the said course and more over, it is the case of respondents that, the institute is run under the BSF Education Fund and does not get any aid from any quarter. It is purely an un-aided Institution run on the basis of limited financial resources collected from the BSF personnel and as per the norms of the AICTE. Therefore, I do not find any justification to hold that, the decision taken by the competent authority is not in good faith. The learned counsel for petitioners has relied upon the decision of the Apex Court in *M. Ramanatha Pillai Vs. The State of Kerala and Another*, to substantiate his stand that abolition of post should be made after obtaining approval from the competent authority and it must be in good faith and not as a mask of some penal action. There is no dispute or quarrel regarding the well-settled law laid down by the Apex Court. But, facts and circumstances of the said case are entirely different from the facts and circumstances of the case on hand. Therefore, the reliance placed by the learned counsel for petitioners is not at all applicable to the facts and circumstances of the instant cases.

11. Regarding the stand of the learned counsel for petitioners that, under Article 311 of the Constitution of India, protection of employment is available to employees working in Government undertakings, he relied upon the judgment of the Apex Court in the case of *UPTRON INDIA LTD. v. SHAMMI BHAN AND ANR.* (Supra) and vehemently submitted that, the termination of services by the Institute by giving three months' salary in lieu of three months' notice is not permissible. The reliance placed by the learned counsel for petitioners cannot be made applicable to the facts and circumstances of the case on hand for the simple reason that, the facts and circumstances of the case referred is entirely

different and also in view of the fact that, the subject matter involved in the referred case is with regard to the permanent status of an employee, employed by Government or Government Company or Government instrumentally or statutory Corporations or any other "authority", within the meaning of Article 12 cannot be terminated abruptly and arbitrarily, either by giving him a month's or three month's notice or pay in lieu thereof or even without notice. But, in the instant case, the Institute is run by the BSF Education Fund, which is purely an un-aided Institution and does not get any aid from any State Government or from the Central Government. Therefore, the ratio of law laid down by the Apex Court in the above referred case is not at all helpful to petitioners in the instant case nor the same can be made applicable to the facts and circumstances of the instant case. However, there is no second thought regarding the well settled principles of law laid down by the Apex Court in the said case.

12. It is significant to note, as rightly pointed out by the learned counsel appearing for respondents that, in the case of *K. RAJENDRAN AND OTHERS v. STATE OF TAMIL NADU AND OTHERS* (Supra) when the Apex Court had an occasion to deal with the question as to whether Article 311(2) could be contravened, if a Government Servant holding a civil post substantially loses his employment by reason of abolition of the post held by him, it placed heavy reliance on the law laid down by it in the case of *SHYAMLAL v. STATE OF UTTAR PRADESH* AIR 1959 SC 369 where it was held thus:

"The abolition of post may have the consequence of termination of service of a Government servant. Such termination is not dismissal or removal within the meaning of Art. 311 of the Constitution. The opportunity of showing cause against the proposed penalty of dismissal or removal does not therefore arise in the case of abolition of post. The abolition of post is not a personal penalty against the government servant. The abolition of post is an executive policy decision Whether after abolition of the posts, the post would or could be offered any employment under the State would therefore be a matter of policy decision of the Government because the abolition of posts does not confer on the person holding the abolished post any right to hold the post."

(emphasis supplied)

After careful perusal of the ratio of law laid down by the Apex Court, it is crystal clear that, even if the abolition of post has the consequence of termination of service of a government servant, such termination is not dismissal or removal within the meaning of Article 311 of the Constitution of India and the opportunity of showing cause against the proposed penalty of dismissal or removal does not therefore arise in the case of abolition of post. The abolition of post is not a personal penalty against the Government servant. The abolition of post is an executive policy decision and whether after abolition of the posts, the Government Servant could be offered any employment would therefore be a matter of policy decision of the Government, because the abolition of post does not confer on the person holding the abolished post any right to hold the post.

Therefore, the said law is directly applicable to the facts and circumstances of the instant case.

13. As rightly pointed out by the learned counsel for respondents 2 to 5, the Apex Court in the case of *STATE OF HARYANA v. DES RAJ SANGAR AND ANR.* (Supra) has held as follows :-

"Whether a post should be retained or abolished is essentially a matter for the Government to decide. As long as such decision of the Government is taken in good faith, the same cannot be set aside by the Court. It is not open to the Court to go behind the wisdom of the decision and substitute its own opinion for that of the Government on the point as to whether a post should or should not be abolished. The decision to abolish the post should, however, as already mentioned, be taken in good faith and be not used as a cloak or pretence to terminate the services of a person holding that post. In case it is found on consideration of the facts of a case that the abolition of the post was only a device to terminate the services of an employee, the abolition of the post would suffer from a serious infirmity and would be liable to be set aside. The termination of a post in good faith and the consequent termination, of the services of the incumbent of that post would not attract Article 311. In *M. Ramanatha Pillai v. The State of Kerala and Anr.* Ray C.J. speaking for the constitution Bench of this Court, observed:

"A post may be abolished in good faith. The order abolishing the post may lose its effective character if it is established to have been made arbitrarily, mala fide or as a mask of some penal action within the meaning of Article 311(2)"

(emphasis supplied)

Hence, in view of the well settled principles of law laid down by the Apex Court and the views expressed by the Honble Mr. Justice Ray, Chief Justice, while speaking for the Constitutional Bench, as extracted above, it is amply clear that, if a post is abolished in good faith, the order abolishing the post may lose its effective character if it is established to have been made arbitrarily, mala fide or as a mask of some penal action within the meaning of Article 311(2) of the Constitution of India. In the instant case, the competent authority after thorough evaluation and after taking into consideration the ground realities and going to the grass route on the basis of the report submitted by the Committee, has taken a decision in its full wisdom as a matter of policy decision and the petitioners have no right to hold the abolished post. Moreover, in the appointment orders issued to the petitioners, it has been spelt out in unequivocal terms that, their appointments are subject to terms and conditions of the relevant Code, particularly, condition No. 3 makes it crystal clear that, the services of the petitioners may be terminated with three months' notice or three months' salary in lieu thereof. When it is established that, the authorities have taken the decision in good faith, this Court cannot interfere with the impugned termination orders, holding that, the petitioners are entitled to protection of

employment under Article 311 of the Constitution that too, when the Institution is run by the BSF Education Fund which is purely an unaided Institution.

14. Lastly, regarding the submission made by the learned counsel for petitioners that, the respondents have not made any sincere efforts for taking the services of the petitioners in other institutions run by its on social, equity and on humanitarian considerations having regard to the fact that, the petitioners are age-bared and this is the only source of income for their livelihood, in my considered view, the said submission of the learned counsel for petitioners cannot be accepted in view of the categorical stand taken by Union of India, in its statement of objections and as rightly pointed out by Sri. Dixit, learned counsel appearing for Union of India. From the said statement of objections, it can be seen that, the authorities have made all sincere efforts to utilise the services of these petitioners and only when it was beyond their control, they could not utilise the services of these petitioners within the Institute run by the BSF Education Fund Society in other states and they were forced to terminate the services of these petitioners by abolishing their respective posts. To substantiate the said stand, Sri. Dixit has also placed heavy reliance on the observations made by the Apex Court in the case of K. RAJENDRAN AND OTHERS v. STATE OF TAMIL NADU AND OTHERS AIR 1982 SC 11071 and drew my attention to paragraph 34 of the said judgment which reads thus:

"34. It is no doubt true that Art. 38 and Art. 43 of (he Constitution insist that the State should endeavour to find sufficient work for the people so that they may put their capacity to work into economic use and earn a fairly good living. But these articles do not mean that everybody should be provided with a job in the civil service of the State and if a person is provided with one he should not be asked to leave it even for a just cause. If it were not so, there would be no justification for a small percentage of the population being in Government service and in receipt of regular income and a large majority of them remaining outside with no guaranteed means of living. It would certainly be an ideal state of affairs if work could be found for all the able bodied man and women and everybody is guaranteed the right to participate in the production of national wealth and to enjoy the fruits thereof. But we are today far away from that goal. The question whether a person who ceases to be a Government servant according to law should be rehabilitated by giving an alternative employment is, as the law stands today, a matter of policy on which the Court has no voice."

(emphasis supplied)

15. The Apex Court has clearly held that, it would certainly be an ideal state of affairs if work could be found for all the able bodied men and women and everybody is guaranteed the right to participate in the production of national wealth and to enjoy the fruits thereof. But we are today far away from that goal. The question whether a person who ceases to be a Government servant according to law should be rehabilitated by giving an alternative employment is, as the law stands today, a matter of policy on which the Court has no voice. In

the instant case, having regard to the facts and circumstances of the case, as stated supra, the Institute has taken the decision of abolition of posts in view of non availability of students to AME course to which posts, these petitioners were appointed and that too after obtaining necessary recommendations from the Committee constituted for the said purpose and after taking necessary approval from the competent authority and also as per the terms and conditions of the appointment orders issued. It is pertinent to note that, the petitioners having accepted the terms and conditions of the offer of appointment including condition No. 3, now, cannot go back on the ground that, condition No. 3 goes against them. The petitioners have accepted condition No. 3 without any objections that their services may be terminated with three months' notice or three months' salary in lieu thereof and in the instant case, after giving three months' salary in lieu of three months' notice or three months' salary in lieu thereof and in the instant case, after giving three months' salary in lieu of three months' notice, their services have been terminated by giving cogent reasons for their termination and after obtaining necessary approval from the competent authority. As a result of abolition of AME course and thereafter the posts attached to it, the only course open for the authorities was to terminate the services of the petitioners. Once they have accepted the terms and conditions of the appointment orders, it is not open for the petitioners to redress their grievance that, the said terms and conditions are not application to them as per the cases, referred supra, especially when the Institute is an un-aided Institution. The respondents have clearly stated that, on two previous occasions, some incentive was given by the then Home Ministry. Therefore, I do not find any justification or substance in the submission made by the learned counsel for petitioners that, the respondents have not made any sincere efforts for accommodating the petitioners in any other Institution run by the said Institute in other states.

16. Having regard to the facts and circumstances of the case, as stated above, and having regard to the factual legal aspect of the matter, as enumerated above, I do not find any justification or good grounds to interfere in the impugned orders passed by the competent authority.

17. For the foregoing reasons, the writ petitions filed by petitioners are liable to be dismissed. Accordingly, they are dismissed. However, it is open for petitioners to give a consolidated representation to respondents to consider their case sympathetically, in case of future vacancy or if there is any scope or accommodating these petitioners to other Institutions. If the petitioners give representation, the competent authority shall consider their representations without being influenced by the decision taken by the authority earlier and the observation made by this Court in the course of its order in these petitions.

18. With these observations, the writ petitions filed by petitioners stand disposed of.