
(2007) 04 AHC CK 0025
In the Allahabad High Court
Case No : Writ Petition No. 284 of 1983

Man Vishram Shukla

APPELLANT

Vs

District Inspector of Schools and Others

RESPONDENT

Date of Decision : 06-04-2007

Acts Referred:

Constitution of India, 1950 — Article 12, 226, 309, 32
Co-operative Societies Act, 1912 — Section 14
General Clauses Act, 1897 — Section 3(42)
Uttar Pradesh High School and Intermediate Colleges (Payment of Salary to Teachers and Other Staff) Act, 1971 — Section 5, 6, 7
Uttar Pradesh Industrial Disputes Act, 1947 — Section 10A
Uttar Pradesh Intermediate Education Act, 1921 — Section 16D, 16G(3)
Uttar Pradesh Intermediate Education Regulations, 1921 — Regulation 100, 24, 31

Citation : (2007) 7 AWC 7694

Hon'ble Judges : Devi Prasad Singh, J

Bench : Single Bench

Advocate : Dr. L.P. Misra, for the Appellant; A.R. Khan, S.L. Verma and H.A. Hussaini, for the Respondent

Final Decision : Dismissed

Judgement

Devi Prasad Singh, J.—Petition under Article 226 of the Constitution of India has been preferred against the order of termination of service passed by the opposite party No. 2, who is the Manager of a Government aided private college. The validity of the impugned order passed by the Manager of an Institution has been questioned on various grounds by the Petitioner's counsel. One important question of law involved is, as to whether a writ petition under Article 226 of the Constitution of India is maintainable against an order passed by the Manager or office bearer of a private institution receiving grant-in-aid more so when controversy involves disputed question of facts? The brief facts of the present case are as under:

2. Lal Bahadur Shastri Uchchattar Madhyamik Krishi Vidyalaya, Veerganj,

Bahraich (in short hereinafter referred as institution) is an institution constituted under U. P. Intermediate Education Act and Regulations framed thereunder. The institution is managed by a society registered under the Societies' Registration Act. The society is governed by its own byelaws. The right and duties of the office bearers and members of the Committee of Management is also governed by the byelaws of the society.

3. Admittedly, institution in question is receiving the grant-in-aid from the State Government. The salary to the teachers and staff is being paid from the grant-in-aid provided by the State Government in accordance to provisions contained in U. P. High School and Intermediate Colleges (Payment of Salary of Teachers and other Employees) Act, 1971 (in short hereinafter referred as Payment of Salary Act) and Rules namely U. P. High School and Intermediate Colleges (Payment of Salary of Teachers and other Employees) Rules, 1993 (in short hereinafter referred as Payment of Salary Rules).

4. According to the Petitioner, he was appointed as a clerk in the institution in question against a clear and permanent vacancy in substantive capacity by an order dated 23.12.1981. He was placed on probation for a period of one year. Copy of the appointment letter issued by the Manager of the institution in question has been filed as Annexure-1 to the writ petition. According to the Petitioner's counsel the Petitioner's services were dispensed with by an order dated 29.12.1982, passed by the opposite party No. 2, who is the Manager of the institution in question. Copy of order of termination of service has been filed as Annexure-2 to the writ petition. Though, the Petitioner claims that he was appointed on substantive post but the order of termination as contained in Annexure-2 to the writ petition shows that Petitioner was appointed for the period of one year by an order dated 23.12.1981. The Committee has not extended Petitioner's services. The order of termination also shows that Petitioner's appointment was made on the post of Library Clerk. According to reasons assigned in the impugned order of termination Petitioner was appointed against the reserve vacancy of Scheduled Caste category and since he was appointed against the reserve vacancy through stop gap arrangement his services were terminated to facilitate regular appointment on the post in question. The impugned order of termination also provides that in case while proceeding with regular appointment no candidate from Scheduled Caste turns up, it could be filled up from the General Category for which Petitioner may move a fresh application. When in the counter-affidavit the condition enumerated in the appointment letter contained in Annexure-1 was disputed Petitioner had filed the copy of the alleged original appointment letter as Annexure-R-2 to the rejoinder-affidavit.

5. On the other hand while defending the impugned order the opposite party Nos. 2 and 3 came forward with the case that appointment of the Petitioner was purely a stop gap arrangement against reserve vacancy. The copy of appointment letter filed as Annexure-1 is not the correct one and is outcome of

fraud. According to Respondents the original appointment letter has been filed as Annexure-CA2 with the counter-affidavit dated 14.11.1983 which shows that one Ram Naresh Misra was appointed on the post of Head Clerk for the period of one year on probation and Petitioner was appointed through stop gap arrangement against the reserve vacancy of Scheduled Caste on account of fact that persons belonging to Scheduled Caste category were not available. An appointment letter dated 21.10.1981 alleged to have been issued appointing Ram Naresh Misra as Head Clerk against regular vacancy on probation and the Petitioner was appointed against a vacancy reserved for Scheduled Caste category as appears from Annexure-2 to the counter-affidavit.

6. During the course of argument learned Counsel for the Petitioner Dr. L. P. Misra, invited attention of this Court towards the fact that advertisement filed by the Respondents in their affidavits in two counter-affidavits dated 14.11.1983 and 27.7.1998 filed as Annexures-C9 and B1 are not identical and suffer from material difference. It has also been submitted that a true typed copy of the appointment letter filed with the writ petition as Annexure-1 is the correct one and its original appointment letter has been filed as Annexure-R2 to the rejoinder-affidavit. Annexure-R2 has been written in own hand writing by the then Principal Sri R. P. Srivastava. It has also been submitted by the Petitioner's counsel that Annexure-1 is the true typed copy of Annexure-R2 and it cannot be disbelieved. Petitioner's counsel also submitted that the service book was prepared by the institution in question which amply establishes that Petitioner was appointed against regular vacancy on probation. It has also been submitted that Sri Ram Naresh Misra had never joined the institution in question and Committee of Management had played fraud by submitting a fake appointment letter as Annexure-C2 to the counter-affidavit. It has been submitted that Sri R. N. Misra was never appointed in the institution while making submission relating to appointment letter filed in the counter-affidavit dated 14.11.1983 as Annexure-C3. It has been submitted that though the Petitioner has signed over the duplicate copy of the appointment letter and acknowledged but the signature was made without going through its content. The management has also filed the copy of the original appointment letter-bearing Petitioner's signature in its second counter-affidavit dated 27.7.1998 as Annexure-B3. Needless to say that Annexure-B3 contains the admitted signature of the Petitioner. However, while assailing the impugned order it has been submitted by the Petitioner's counsel that handwriting of the alleged appointment letter dated 23.11.1981 filed as Annexure-B3 to the counter-affidavit dated 27.7.1998 is same as of the photostat copy of the hand written appointment letter, i.e., Annexure-R2 to the rejoinder-affidavit.

7. While assailing the impugned order learned Counsel for the Petitioner proceeded to submit that the impugned order of termination is stigmatic in nature and it has been passed without prior permission of the District Inspector of Schools as required under Regulation 31 of Chapter III and the regulation framed under the U. P. Intermediate Education Act. It has also been submitted

by the Petitioner's counsel that the Committee of Management has committed fraud by filing a fake appointment letter and by changing the nature of Petitioner's appointment from regular to stop gap arrangement. It has also been submitted that in the absence of prior approval by the District Inspector of Schools impugned order of termination is void ab initio. The facts and circumstances on record show that the Petitioner was appointed against a regular vacancy reserved for Scheduled Caste category and not against stop gap arrangement. While advancing the argument relating to maintainability of the writ petition, it was submitted by the Petitioner's counsel relying upon various cases that the institution discharges public duty hence the order passed by the Manager of the Committee of Management is amenable to writ jurisdiction. It has been submitted that writ petition under Article 226 of the Constitution of India can be entertained for any purpose and order passed, not only by an authority but any person, may be subjected to judicial review.

8. While assailing the impugned order on the ground that Petitioner's services cannot be terminated being on probation, learned Counsel for the Petitioner has relied upon the judgments in *Anoop Jaiswal Vs. Government of India and Another*, ; *V. P. Ahuja v. State of Punjab and others*, 2000 (2) SCC 239: 2000 (2) AWC 1354 (SC) ; *Dipti Prakash Banerjee Vs. Satvendra Nath Bose National center for Basic Sciences, Calcutta and Others*, and *Indra Pal Gupta Vs. Managing Committee, Model Inter College, Thora*,

9. While submitting that order of termination is bad in the absence of proper approval by District Inspector of Schools, Petitioner's counsel has relied upon the cases in *Municipal Board, Bareilly v. B. V. Mehrotra*, 1968 ALJ 1127 (DB) ; *Gochar Krishak Inter College v. Deputy Director of Education and others*, 1975 ALR 323 ; *Khalil Ahmad Vs. The Manager, Abdul Karim Khan Higher Secondary School, Amroha, Dist. Moradabad and Others*, and *Managing Committee, Sohan Lal Higher Secondary School v. Shiv Dutta Gupta*, 1974 ALJ 465 (FB).

10. While defending the present writ petition on the ground of maintainability, Petitioner's counsel has relied upon Section 3(42) of the General Clauses Act, 1897 and proceeded to submit that word "person" includes a company, association or body of individual whether incorporated or not. Learned Counsel for the Petitioner has relied upon the judgment in *Anoop Jaiswal Vs. Government of India and Another*, *V. P. Ahuja v. State of Punjab and others*, 2000 (2) SCC 239: 2000 (2) AWC 1354 (SC) ; *Dipti Prakash Banerjee Vs. Satvendra Nath Bose National center for Basic Sciences, Calcutta and Others*, *Indra Pal Gupta Vs. Managing Committee, Model Inter College, Thora*, *Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another*, *Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, Rohtas Industries Ltd. and Another Vs. Rohtas Industries Staff Union and Others*, *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs.*

V.R. Rudani and Others, Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., K. Krishnamacharyulu and Others Vs. Sri Venkateswara Hindu College of Engineering and Another, U.P. State Cooperative Land Development Bank Ltd. Vs. Chandra Bhan Dubey and Others, Radhey Shyam Rai v. State of U. P. and Ors. (2005) 3 UPLBEC 2549 (FB) ; Zee Telefilms Ltd. and Another Vs. Union of India (UOI) and Others, Aley Ahmad Abidi Vs. Dist. Inspector of Schools, Allahabad and Others, ; Ravi Dutta Sharma v. Modern Educational Intermediate College, Lucknow and others, 1981 ALJ 1132; S.C. Pandey v. District Basic Education Officer, 1991 LCD 103; Municipal Board, Bareilly v. B. V. Mehrotra, 1968 ALJ 1127 (DB); Gochar Krishak Inter College v. Deputy Director of Education and others, 1975 ALJ 323 ; Khalil Ahmad Vs. The Manager, Abdul Karim Khan Higher Secondary School, Amroha, Dist. Moradabad and Others, Managing Committee, Sohan Lal Higher Secondary School v. Shiv Dutta Gupta, 1974 ALJ 465 (FB) and a Division Bench judgment dated 27.7.2004 passed in Writ Petition No. 394 (MB) of 1988, Harold Tames v. Union of India and others Writ Petition No. 394 (MB) of 1988.

11. It was vehemently argued by the Petitioner's counsel that though the order has been passed by the Manager of a private institution but it is amenable to writ jurisdiction as the management discharges public obligation. Petitioner's counsel has proceeded to submit that prerogative writs are maintainable for the enforcement of any right conferred by Part III or for any other purpose. It has also been submitted that power conferred by Article 226 of the Constitution may be exercised by this Court to issue a writ, order or direction to any Government, authority or persons. Much emphasis has been given by the Petitioner's counsel to the use of word "person" and relying upon Section 3(42) of the General Clauses Act. It has been submitted that person includes any company or association or body of individuals, whether is a corporation or not.

12. On the other hand Sri A. R. Khan, learned Counsel for the Respondent Committee of Management has submitted that there is no material difference between the copy of advertisement filed as Annexure-C1 to the other counter-affidavit. The difference of one word "Vigyapan" is inadvertent and does not create a ground to disbelieve the same. It has also been submitted by Sri A. R. Khan that while appointing the Petitioner, the provision contained in Chapter III of the U. P. Intermediate Education Act was not followed. No advertisement was issued inviting application from all concerned. Learned Counsel for the Respondents has invited attention towards certain documents annexed with the counter-affidavit dated 27.7.1998. According to Sri A. R. Khan Petitioner himself had signed on the appointment letter filed as Annexure-B3 to the counter-affidavit in lieu of acknowledgment hence it cannot be disbelieved. It has been further submitted that the statement sent to District Inspector of Schools by the management in required format (Annexure-B4) also indicates that Petitioner was appointed in stop gap arrangement for one year since the candidates belonging to Scheduled Caste category was not available. Learned Counsel for the Petitioner has invited attention towards the letter dated 31.10.1981 sent by

District Inspector of Schools to the Manager inviting information relating to selection in question. Copy of letter dated 31.10.1981 has been filed as Annexure-B4 to the counter-affidavit. In response to letter of District Inspector of Schools reply was sent by the Manager by letter dated 6.11.1981, copy of which has been filed as Annexure-B6 to the counter-affidavit. The chart enclosed with Annexure-B6 shows that Petitioner was appointed for a period of one year in stop gap arrangement subject to regular selection in next session. It has been also submitted by the Respondents' counsel that the argument advanced by the Petitioner's counsel relying upon the appointment letter filed as Annexure-R2 to the rejoinder-affidavit is not sustainable. It has been further submitted that there is interpolation or cutting at the bottom of the alleged appointment letter. The signature of Sri Mathili Saran Srivastava as exists on the allegedly appointment letter filed as Annexure-R2 is forged one and does not tally with the actual signature of Sri Mathili Saran Srivastava. Learned Counsel for the Respondents has further proceeded to argue that Sri R. P. Srivastava was not the principal of the institution in question at the relevant time. One Sri P. N. Yadav was the principal of the institution after up gradation of the school. Sri R. P. Srivastava resumed duty up to 1.9.1985. Necessary averments have been made in Paragraph 4 of the supplementary-counter affidavit.

It has been also submitted that since the Petitioner was appointed only for the period of one year on temporary basis in stop gap arrangement, his services could have been dispensed without any notice in view of provision contained in Regulation 24 of Chapter III of the U. P. Intermediate Education Act. Learned Counsel for the Petitioner has submitted that the impugned order is not an order of termination but it is simply an information communicated by Respondents that Petitioner's services has come to an end in terms of appointment letter. It has also been submitted by the Respondents' counsel that even if it is assumed that Petitioner was on probation, his services could have been dispensed with in view of settled proposition of law.

Respondents' counsel Sri A. R. Khan has further proceeded to submit that controversy involves disputed question of fact and appropriate remedy for it to file a regular suit and present writ petition is not maintainable.

13. In support of his submission learned Counsel for the Respondents Sri A. R. Khan has relied upon Apex Court judgments in Pradeep Kumar Biswas and Others Vs. Indian Institute of Chemical Biology and Others, ; Heera Lal Gaur v. District Inspector of Schools, Azamgarh and others, 1981 UPLBEC 226 (DB); Executive Committee of Vaish Degree College, Shamli and Ors. v. Laxmi Narain and others, AIR 1976 SC 888 ; Radha Charan Sharma v. U. P. Co-operative Federation and others, 1982 UPLBEC 89 (FB) ; Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, Dharam Dutt and Others Vs. Union of India (UOI) and Others, Dr. Karan Singh Vs. State of Jammu and Kashmir and Another, State of Jammu and Kashmir Vs. Ghulam Mohd. Dar and Another, ; Director of Institute of Management Development U. P. v. Smt. Puspa Srivastava, 1992 (11) SBLR

20 ; Dr. L.M. Nath Vs. Dr. S.K. Kacker and Others, Shri Ramendra Kishore Biswas Vs. The State of Tripura and Others, Janta Vidyalaya Society, Deoria and Anr. v. Deputy Director of Education, VIIth Region, Gorakhpur and others, 1983 UPLBEC 622 ; Unit Trust of India and Others Vs. T. Bijaya Kumar and Another, K.V. Krishnamani Vs. Lalit Kala Academy, Oswal Pressure Die Casting v. Presiding Officer, 1998 (2) UPLBEC ; 1998 (2) AWC 1166 (SC); Mathew P. Thomas Vs. Kerala State Civil Supply Corpn. Ltd. and Others, and Registrar, High Court of Gujarat and Another Vs. C.G. Sharma,

14. A plain reading of Article 226 of the Constitution indicates that power conferred by Clause 2 of Article 226 of the Constitution may be exercised while invoking jurisdiction under Clause 1 of Article 226 of the Constitution. Therefore, while considering the maintainability of the writ petition at first instance it should be seen as to whether the petition is maintainable under Clause 1 of Article 226 of the Constitution or not. Needless to say that power to issue prerogative writs vesting in this Court is confined to Clause 1 of Article 226 of the Constitution. Unless a writ held to be maintainable under Clause 1 of Article 226 of the Constitution no order may be passed under Clause 2 of Article 226 of the Constitution. Under Clause 1, a prerogative writ may be issued by this Court for the enforcement of any right conferred by Part III or for any other purpose. The words "for another purpose" give ample power to this Court to exercise jurisdiction under Article 226 of the Constitution for the ends of justice. However, the power is subject to self imposed restriction exercised by this Court while entertaining a writ petition under writ jurisdiction.

Disputed question of facts

15. Ordinarily, whenever a controversy involves a complexed disputed question of fact and law, both, then power under Article 226 of the Constitution of India should not be exercised as settled by Apex Court by a catena of judgments. Whenever a complexed disputed question of fact is involved appropriate remedy to aggrieved party is to approach the competent authority or file a regular suit. The Constitution Bench of Hon''ble Supreme Court in a case in Union of India (UOI) Vs. Ghaus Mohammad, held as under:

7. The question whether the Respondent is a foreigner is a question of fact on which there is a great deal of dispute which would require a detailed examination of evidence. A proceeding under Article 226 of the Constitution would not be appropriate for a decision of the question. In our view this question is best decided by a suit and to this course neither party seems to have any serious objection. As we propose to leave the Respondent free to file such a suit if he is so advised, we have not dealt with the evidence on the record on the question of the Respondent's nationality so as not to prejudice any proceeding that may be brought in the future.

In one another judgment in AIR 1997 993 (SC) the Hon''ble Supreme Court again held that the power of Article 226 is not akin to appellate power. It is

supervisory power and High Court normally should not go into or adjudicate upon the disputed question of fact. Relevant portion from the judgment of Vyavsaaya and Co. (supra) is reproduced as under:

15. It has been repeatedly held by this Court that the power of the High Court under Article 226 of the Constitution is not akin to appellate power. It is a supervisory power. While exercising this power, the Court does not go into the merits of the decision taken by the authorities concerned but only ensures that the decision is arrived at in accordance with the procedure prescribed by law and in accordance with the principles of natural justice wherever applicable. Further, where there are disputed questions of fact, the High Court does not normally go into or adjudicate upon the disputed questions of fact. Yet another principle which has been repeatedly affirmed by this Court is that a person who solemnly enters into a contract cannot be allowed to wriggle out of it by resorting to Article 226 of the Constitution....

18. A perusal of the orders extracted hereinabove show that the learned single Judge-it appears that almost all the orders are made by the same learned Judge (T. S. Doabia, J.) has not kept in view any of the norms governing the exercise of writ jurisdiction of the High Court. The relevant facts were seriously disputed before him, each, party alleging that the other has violated the terms and conditions of licence and the rules. The repeated interim orders passed permitting the supply of liquor to the writ Petitioner, sale of liquor by the writ Petitioner under the supervision of the authorities, partial deposits of the amounts with the authorities and release of the balance of the amounts to the writ Petitioner, appointment of an Advocate Commissioner to act as a "conduit" between the State and the writ Petitioner and appointing a "commission" comprising of two advocates to look into and decide the daily disputes arising between the parties-are all the outcome of a total disregard of the norms governing the writ jurisdiction. We are surprised that such orders could ever have been passed by the High Court-at any rate, without safeguarding the interests of the State....

The aforementioned principle of law has been reiterated by Hon"ble Supreme Court from time to time vide D.L.F. Housing Construction (P) Ltd. Vs. Delhi Municipal Corpn. and Others, ; Smt. Gunwant Kaur and Others Vs. Municipal Committee, Bhatinda and Others, ; Sohanlal Vs. The Union of India (UOI), ; Thakur Amar Singhji Vs. State of Rajasthan, ; New Satgram Engineering Works and Another Vs. Union of India (UOI) and Others, Sri Tirumala Venkateswara Timber and Bamboo Firm v. C.T.O. Rajahmundry, AIR 1968 SC 784 (788) (Para 5). In the matter of Madhu Limaye, AIR 1969 SC 1014 (Para 15) ; The Delhi Development Authority, New Delhi Vs. Lila D. Bhagat and Others,

16. It is also settled law that wherever a disputed question of fact is intermixed with the question of law and an aggrieved party has got alternative remedy, then ordinarily the power under Article 226 of the Constitution of India should not be exercised and aggrieved party may be permitted to approach the statutory body

for exhaustion of alternative remedy. In a case in U.P. State Bridge Corporation Ltd. and Others Vs. U.P. Rajya Setu Nigam S. Karamchari Sangh, where the services of a workman were terminated in violation of the standing order and dispute relates to enforcement of a right or an obligation created under the Act, then the remedy available to claimant is to get adjudication under the Act. Relevant portion from the judgment of U. P. State Bridge Corporation Limited (supra), is reproduced as under:

11. We are of the firm opinion that the High Court erred in entertaining the writ petition of the Respondent Union at all. The dispute was an industrial dispute both within the meaning of the Industrial Disputes Act, 1947, as well as U. P. I.D.A., 1947. The rights and obligations sought to be enforced by the Respondent Union in the writ petition are those created by the Industrial Disputes Act. In Premier Automobiles Ltd. v. Kamlekar Shantaram Wadke, it was held that when the dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the claimant is to get adjudication under the Act. This was because the Industrial Disputes Act was made to provide-

a speedy, inexpensive and effective forum for resolution of disputes arising between workmen and their employers. The idea has been to ensure that the workmen do not get caught in the labyrinth of civil courts with their layers upon layers of appeals and revisions and the elaborate procedural laws, which the workmen can ill-afford. The procedures followed by civil courts, it was thought, would not facilitate a prompt and effective disposal of these disputes. As against this, the Courts and Tribunals created by the Industrial Disputes Act are not shackled by these procedural laws nor is their award subject to any appeals or revisions. Because of their informality, the workmen and their representatives can themselves prosecute or defend their cases. These forums are empowered to grant such relief as they think just and appropriate. They can even substitute the punishment in many cases. They can make and remake the contracts, settlements, wage structures and what not. Their awards are no doubt amenable to jurisdiction of the High Court under Article 226 as also to be jurisdiction of this Court under Article 32, but they are extraordinary remedies subject to several self-imposed constraints. It is, therefore, always in the interest of the workmen that disputes concerning them are adjudicated in the forums created by the Act and not in a civil court. That is the entire policy underlying the vast array of enactments concern-ing workmen. This legislative policy and intendment should necessarily weigh with the Courts in interpreting these enactments and the disputes arising under them.

12. Although these obser-vations were made in the context of the jurisdiction of the civil court to entertain the proceedings relating to an industrial dispute and may not be read as a limitation on the Court's powers under Article 226, nevertheless it would need a very strong case indeed for the High Court to deviate from the principle that where a specific remedy is given by the statute, the person who insists upon such remedy can avail of the process as provided in

that statute and in no other manner.

13. There is another aspect of the matter. Certified Standing Orders have been held to constitute statutory terms and conditions of service D. K. Yadav v. J. M. A. Industries Ltd. Although this statement of the law was doubted in Rajasthan S.R.T.C. v. Krishna Kant, it was not deviated from. It was however made clear that certified standing orders do not constitute "statutory provisions" in the sense that dismissal or removal of an employee in contravention of the certified standing orders would be a contravention of statutory provisions enabling the workman to file a writ petition for their enforcement. This is what was said by this Court in Rajasthan Transport Corporation:

Indeed, if it is held that certified standing orders constitute statutory provisions or have statutory force, a writ petition would also lie for their enforcement just as in the case of violation of the Rules made under the proviso to Article 309 of the Constitution. Neither a suit would be necessary nor a reference under Industrial Disputes Act. We do not think the certified standing orders can be elevated to that status. It is one thing to say that they are statutorily imposed conditions of service and an altogether different thing to say that they constitute statutory provisions themselves.

(Emphasis in original)

14. Finally, it is an established practice that the Court exercising extraordinary jurisdiction under Article 226 should have refused to do so where there are disputed questions of fact. In the present case, the nature of the employment of the workmen was in dispute. According to the Appellant, the workmen had been appointed in connection with a particular project and there was no question of absorbing them or their continuing in service once the project was completed."....

The aforementioned settled proposition of law has been affirmed by catena of other judgments vide Mrs. Sanjana M. Wig Vs. Hindustan Petro Corporation Ltd., Transmission Corporation of A. P. v. Consolidation of Holdings Act, Prabhakar and others, 2004 (5) SCC 51 (Para 19) ; Asha Prasad v. Chandrakant Gopalka and others, 2003 (12) SCC 347 ; State of Punjab and Others Vs. Punjab Fibres Ltd. and Others, Shri Ramendra Kishore Biswas Vs. The State of Tripura and Others,

17. However, it is a rule of discretion and not of exclusion of jurisdiction in declining to entertain a writ petition on the ground of involvement of a disputed question of fact vide S.N. Sharma Vs. Bipen Kumar Tiwari and Others, In case, an issue can be decided on the basis of material on record then the Court is competent to decide an issue even if it involves disputed question of fact vide Century Spinning and Manufacturing Company Ltd. and Another Vs. The Ulhasnagar Municipal Council and Another,

18. Petitioner's counsel has admitted the Petitioner's signature over the appointment letter dated 23.12.1981, the photocopy of which has been filed by the Respondents as Annexure-B3. However, it has been submitted that the

signature was made inadvertently without reading its contents under the compelling circumstances. Whether signature was made under duress or inadvertently, is a disputed question, which requires adducing of evidence and ordinarily this cannot be adjudicated by this Court under extraordinary remedy of Article 226 of the Constitution of India, in view of law discussed hereinabove.

19. There is one another aspect of the matter. It was submitted by the Petitioner's counsel that hand writing of the appointment letter dated 23.12.1981, filed by Respondents as Annexure-B3 to the counter-affidavit dated 27.7.1998 is same as of the hand writing of appointment letter filed by the Petitioner as Annexure-R2 to the rejoinder-affidavit.

20. It has been submitted by the Petitioner's counsel that the original appointment letter dated 23.12.1981 given to the Petitioner is in the original hand writing of Sri Rudra Pratap Narain Srivastava, as pleaded in Paragraph 18 of the rejoinder-affidavit dated 5.1.1984. Learned Counsel for the Petitioner submits that handwriting of Sri Rudra Pratap Narain Srivastava, Principal, is tallying with the other documents on record. However, Annexure-R2 seems to have been issued under the signature of Sri Mathili Saran Srivastava, the Manager of the institution in question. There is also a cutting at the bottom of the appointment letter filed by the Petitioner as Annexure-R2. It is not possible for this Court to record a finding from the plain reading of appointment letter that it has been written in the hand writing of Sri Rudra Pratap Narain Srivastava.

21. In the present case letter sent by District Inspector of Schools dated 31.10.1981 calling certain information from the Committee of Management and in response to it letter sent by the Manager dated 6.11.1981 alongwith the copy of selection proceeding, prima facie, shows that selection of the Petitioner was held only for one year against the vacancy reserved for Scheduled Caste category to meet out the exigencies of services. In the counter-affidavit filed by the Respondents it has been categorically stated that the post was reserved for Scheduled Caste category and on account of non-availability of suitable candidate, Petitioner was appointed to meet out the exigencies of services for one year. The District Inspector of Schools in Paragraphs 4, 5 and 13 of the counter-affidavit has also stated that the selection in question was held and Petitioner was appointed only for the period of one year in stop gap arrangement to meet out the exigencies of the services. He was not placed on probation. It has been stated that in pursuance to power conferred by Regulation 24 of Chapter III of the Regulations Petitioner was dispensed with from service. For convenience Regulation 24 of Chapter III issued under U. P. Intermediate Education Act is reproduced as under:

The services of an employee appointed as temporary measure for the definite period or in a leave vacancy or in vacancy occurring for a part of the session shall unless extended according to law, terminate on the expiry of the period for which he was appointed or when the vacancy comes to an end whichever is earlier, and no prior notice shall be needed for such termination.

Thus, in view of Regulation 24, referred hereinabove, undoubtedly in case Petitioner was appointed on ad hoc or temporary basis to meet out the exigencies of services then his services could have been dispensed with by the Manager. However, the Petitioner has denied that he was appointed on temporary or ad hoc basis.

22. While filing the supplementary-counter-affidavit Sri Rudra Pratap Narain Srivastava has denied that any service record was prepared. It has also been stated by him that alleged hand written appointment letter, photocopy of which has been filed as Annexure-R2, was not prepared by him. It has been also stated that during period in question Sri Rudra Pratap Narain Srivastava was not the principal of the college in question. He was authorised to discharge duty from 1.9.1985 and continued upto March, 1987. In April, 1987, one Sri K. P. Srivastava was allowed to work as Officiating Principal, who continued in office up to 30.4.1990. He has denied that the appointment letter is in his handwriting. It has also been submitted that Annexure-R2, which is the copy of alleged appointment letter, is the forged and fictitious document. The averments contained in supplementary-counter-affidavit have not been denied.

Thus, in view of above on account of serious disputed question of fact it is not possible to resolve the controversy under Article 226 of the Constitution of India.

Maintainability of the writ petition

23. Learned Counsel for the Petitioner has proceeded to submit that the Manager of the institution discharges public duty hence order passed by the Manager is amenable to writ jurisdiction. Learned Counsel for the Petitioner has further proceeded to submit that since the Manager discharges public duty, in case any statutory provision has been violated or the power has been exercised in arbitrary manner for extraneous reasons, the decision taken thereon should be set aside under extraordinary remedy of Article 226 of the Constitution of India.

24. It is undisputed fact that the institution in question is an institution managed by a society registered under the Society's Registration Act. The society has been constituted by its members, who have formed an institution voluntarily, to run the institution in question. The byelaws of the society or the scheme of the administration, both, regulate the functioning of the rights and duties of its office bearer. However, so far as the service conditions are concerned, they are governed by U. P. Intermediate Education Act and Regulations framed thereunder. Though, the Government provides grant-in-aid to the teachers and staff of the institution but the disciplinary power to punish the employees, particularly Class III and Class IV, rests in the hands of the Committee of Management and Principal of the institution in question. Under these circumstances the maintainability of the writ petition is to be judged keeping in view the law settled by Apex Court and this Court. The appointing authority of class IV employees is the Principal and of Class III employees is the management. In the present case Petitioner was appointed by the Manager of

the institution in question who is an elected office bearer.

25. The case of Anoop Jaiswal (supra) relates to Government employee who was selected by the U. P. Public Service Commission and appointed in the Indian Police Service. During the course of probation his services were dispensed with. He was discharged from service during probationary period. Supreme Court set aside the order of discharge of service on the ground that it was punitive and it is not applicable in the present case.

26. The case of Indrapal Gupta (supra), relates to termination of service of Principal of an inter college in pursuance to resolution of the Committee of Management. From the perusal of judgment of Indrapal Gupta (supra), it appears that Hon"ble Supreme Court has not recorded any finding relating to maintainability of the writ petition in the High Court under Article 226 of the Constitution of India. Accordingly, it does not extend any help to the Petitioner to advance his argument to make a submission that writ petition is maintainable under Article 226 of the Constitution of India. The judgment of Division Bench of High Court was set aside on the ground that order of termination was stigmatic.

27. The case of Sukhdev Singh (supra) relates to a controversy where the Apex Court held that Oil and Natural Gas Commission, Life Insurance Corporation of India and Industrial Finance Corporation are the State and covered by expression "other authorities" provided under Article 12 of the Constitution of India. While interpreting the words "authority or public administrative body or agency" ordinarily include the power to make or adopt rules and regulations with respect to matters within the province of such body. Relevant portion from the Constitution Bench judgment of Sukhdeo Singh (supra) is reproduced as under:

The authority of a statutory body or public administrative body or agency ordinarily includes the power to make or adopt rules and regulations with respect to matters within the province of such body provided such Rules and Regulations are not in consistent with the relevant law. In America a "public agency" has been defined as an agency endowed with Governmental or public functions.

28. In the case of Rohtash Industries Limited (supra), Apex Court held that the jurisdiction of High Court under Article 226 of the Constitution of India is wide enough and order passed thereon can affect any person even a private individual. The error of law apparent at the face of record in an award passed by Arbitrator u/s 10A of Industrial Disputes Act was subject-matter of dispute in the case of Rohtash Industries Limited (supra) and is not applicable under the facts and circumstances of the present case.

29. The case of Unni Krishnan J. P. and Ors. (supra) relates to charging of fees by private institution and Apex Court held that duty relating to imparting of education by them is amenable to Part III of the Constitution. However, it was not disputed before the Hon"ble Supreme Court in the case of Unni Krishnan J. P. and Ors. (supra) where in the service matter order passed by the Manager of the institution could have been challenged under Article 226 of the Constitution of

India. The controversy in the case of Unni Krishnan J. P. and Ors. (supra) was of public importance relating to recognition, affiliation and charging of fees and is not applicable under the facts and circumstances of the present case. Though, Hon''ble Supreme Court held that private educational institutions discharge public duty but it has not been held by Apex Court that these private institutions may be held to be State within the meaning of Article 12 of the Constitution of India.

30. The case of Anadi Mukta Sadguru Shri Mukta Ji Vandana Ji Swamy Swarn Jayanti Mahotsava Smarak Trust and Ors. (supra), relates to payment of compensation after the closure of the college. Hon''ble Supreme Court held that if the management of a college is purely a private body with no public duty mandamus will not lie. It has been held by Apex Court that aided institutions, particularly the Government aided institutions, discharge public function by way of imparting education to the students. Hon''ble Supreme Court held that prerogative writ may be issued to secure fundamental rights to any authority or any person. It can be issued for any other purpose apart from enforcement of fundamental rights. However, Apex Court has not ruled that against the decision taken by the Committee of Management writ petition shall be maintainable for the enforcement of fundamental rights or for any other purpose in public interest. The public interest is judged on different footings than an exclusively private dispute between the parties like present one.

31. In the case of K. Krishnmacharyulu and Ors. (supra), Hon''ble Supreme Court held that in case writ petition is filed against the private party but public interest element is involved then the High Court may interfere under Article 226 of the Constitution of India. In the present case, the dispute is purely a private dispute between the two parties lacking any public interest.

32. In the case of Dwarika Nath (supra), Supreme Court held that High Court has ample power to issue prerogative writ wherever injustice is caused and authority who is required to act in accordance to Act and statute in case commits wrong, order passed by such authority may be interfered under writ jurisdiction. The case of Dwarika Nath (supra) relates to assessment under Taxation Law under Income Tax Act, where order passed by Income Tax Tribunal was questioned.

33. In the case of U. P. State Co-operative Land Development Bank Ltd. (supra), Hon''ble Supreme Court held that jurisdiction under Article 226 of the Constitution of India is subject to guidelines issued by the High Court and self imposed restriction. It was held by Supreme Court that Constitution of India is not a statute but it is a fountain head of all statutes. It has been further held by Apex Court that regulations framed under statutory provisions have the force of law. However, the Supreme Court while relying upon the case of Sukhdev Singh (supra) held that control of State Government on the U. P. State Co-operative Land Development Bank Limited is deep and pervasive, hence shall be amenable to writ jurisdiction. But so far as the institution in question is concerned State lacks deep and pervasive control.

34. The case of Deepti Prakash Banerji (supra) and V. P. Ahuja (supra) relate to punitive or stigmatic order of termination of services. Issue before the Supreme Court in these cases was relating to validity of stigmatic or punitive order of termination and not the maintainability of the writ petition under Article 226 of the Constitution of India concerned with private institution.

35. The case of Radhey Shyam Rai (supra), relates to question as to whether U. P. Ganna Kisan Sansthan is a State and falls within the ambit of Article 12 of the Constitution of India. The case of Radhey Shyam Rai (supra) does not relate to adjudication of dispute relating to college managed by a private society.

36. In the case of Ali Ahmad Abdi (supra) a Full Bench of this Court held that writ petition against a decision taken by the Committee of Management of a Government-aided institution is maintainable. Though, Committee of Management is not a statutory body but writ petition shall be maintainable since it is entrusted with performance of statutory duties.

Similar proposition of law has been reiterated by a Division Bench of this Court in the case of Ravi Dutt Sharma (supra) where a Division Bench held that order of termination passed by the Committee of Management without prior approval of District Inspector of Schools is amenable to writ jurisdiction.

37. In the case of S.C. Pandey (supra) also the dictum of Ali Ahmad Abdi (supra), has been reiterated.

38. In the case of Managing Committee Sohan Lal Higher Secondary School (supra) a Full Bench of this Court held that before termination of service prior approval of District Inspector of Schools is mandatory in view of provisions contained in Section 16G (3) (a) of the U. P. Intermediate Education Act.

39. The case of Khalil Ahmad (supra) relates to maintainability of subsequent writ petition and termination of service of a teacher.

40. In the case of Municipal Board, Bareilly (supra), a Division Bench of this Court held that Section 16G (3) (a) is absolute in term and makes no distinction between confirmed and probationary Principal. With result he or she cannot be discharged or removed from service without prior approval in writing of District Inspector of Schools.

41. Undoubtedly, under Article 226 of the Constitution of India mandamus may be issued in case a private body or an institution does not follow the statutory provision or direction issued by the statutory body while discharging public duty. This Court under Article 226 of the Constitution of India may compel such private body to discharge its public duty in accordance to law. What is public duty and public authority has been interpreted by Hon'ble Supreme Court in a case Shri Anadi Mukta Sadguru Shree Muktajee Vandasjswami Suvarna Jayanti Mahotsav Smarak Trust and Ors. v. V. R. Rudani and others, AIR 1989 SC 1607. It has also been held in the case of Shri Anadi Mukta Sadguru Shree Muktajee Vandasjswami Suvarna Jayanti Mahotsav Smarak Trust (supra), that a writ of

mandamus may be issued to a body or authority depending upon the nature of duty imposed upon them. Relevant portion from the judgment of Shri Anadi Mukta Sadgru Shree Muktajee Vandasjswami Suvarna Jayanti Mahotsav Smarak Trust (supra) is reproduced as under:

16. There, however, the prerogative writ of mandamus confined only to public authorities to compel performance of public duty. The public authority for them means every body which is created by statute and whose powers and duties are defined by statute. So Government departments, local authorities, police authorities, and statutory undertakings and corporations, are all public authorities. But there is no such limitation for our High Courts to issue the writ in the nature of mandamus. Article 226 confers wide powers on the High Courts to issue writs in the nature of prerogative writs. This is a striking departure from the English law. Under Article 226, writs can be issued to any person or authority. It can be issued for the enforcement of any of the fundamental rights and for any other purpose....

19. The term "authority" used in Article 226, in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words "any person or authority" used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed. If a positive obligation exists mandamus cannot be denied.

42. Though the Full Bench judgments (supra) and Division Bench judgments (supra) relied upon by the Petitioner's counsel show that writ petition shall be maintainable against an order of termination or suspension passed by a Manager of an institution running a private Government aided college but in case subsequent judgments of Hon'ble Supreme Court are taken into account then it appears that ordinarily writ petition shall not be maintainable against an order of suspension or termination passed by the Manager of a Government aided college or institution. The leading Apex Court judgment on the question has been in *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, In the case of *Ajai Hasia* (supra), the Constitution Bench held that merely grant of financial assistance by the State Government shall not be sufficient to hold that an organization is "State" within the meaning of Article 12 of the Constitution of India. There must be deep and pervasive control over day to day functioning of the body. Relevant portion from the case of *Ajai Hasia* (paragraph 9) (supra), is reproduced as under:

9. The tests for determining as to when a corporation can be said to be an

instrumentality or agency of Government may now be culled out from the judgment in the International Airport Authority case. These tests are not conclusive or clinching, but they are merely indicative indicia which have to be used with care and caution, because while stressing the necessity of a wide meaning to be placed on the expression "other authorities", it must be realised that it should not be stretched so far as to bring in every autonomous body which has some nexus with the Government within the sweep of the expression. A wide enlargement of the meaning must be tempered by a wise limitation. We may summarise the relevant gathered from the decision in the International Airport Authority case as follows:

1. One thing is clear that if the entire share capital of the corporation is held by Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of Government. (SCC p. 507, Para 14) ;
2. Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character. (SCC p. 508, Para 15) ;
3. It may also be a relevant factor...whether the corporation enjoys monopoly status which is State-conferred or State-protected. (SCC p. 508, Para 15) ;
4. Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality. (SCC p. 508, Para 15) ;
5. If the functions of corporation are of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation an instrumentality or agency of government. (SCC p. 509, Para 16) ;
6. "Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference" of the corporation being an instrumentality or agency of Government. (SCC p. 510, Para 18).

If on a consideration of these relevant factors it is found that the corporation is an instrumentality or agency of Government, it would, as pointed out in the International Airport Authority case, be an "authority" and, therefore, "State" within the meaning of the expression in Article 12.

43. One other judgment Pradeep Kumar Biswas and Others Vs. Indian Institute of Chemical Biology and Others, , by majority opinion the Constitution Bench of Apex Court had affirmed the test formulated in Ajai Hasia's case (supra) in the following words:

The picture that ultimately emerges is that the tests formulated in Ajay Hasia are not a rigid set of principles so that if a body falls within any one of them it must, ex hypothesi, be considered to be a State within the meaning of Article 12. The question in each case would be whether in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated

by or under the control of the Government. Such control must be particular to the body in question and must be pervasive. If this is found then the body is a State within Article 12. On the other hand, when the control is merely regulatory whether under statute or otherwise, it would not serve to make the body a State.

44. The aforementioned pro-position of law has been followed by Hon"ble Supreme Court in other cases of Apex Court in Virendra Kumar Srivastava Vs. U.P. Rajya Karmachari Kalyan Nigam and Another, ; Zee Telefilms Ltd. and Another Vs. Union of India (UOI) and Others, Zoroastrian Co-operative Housing Society Limited and Another Vs. District Registrar Co-operative Societies (Urban) and Others, and Zoroastrian Cooperative Housing Society Limited and Anr. v. District Registrar, Cooperative Societies (Urban) and others.

45. For convenience relevant portion from the case of Gee Telefilms (supra), is reproduced as under:

10. From the above, it is seen that the intention of the constitution framers in incorporating this article was to treat such authority which has been created by law and which has got certain powers to make laws, to make rules and regulations to be included in the term "other authorities" as found presently in Article 12.

46. In the case of Zoroastrian Cooperative Housing Society Limited (supra), the Hon"ble Supreme Court held as under:

The fundamental rights in Part III of the Constitution are normally enforced against State action or action by other authorities who may come within the purview of Article 12 of the Constitution. It is not possible to argue that a person has a fundamental right to become a member of a voluntary association or of a cooperative society governed by its own bye-laws. So long as this position holds, we are of the view that it is not possible, especially for a Registrar who is an authority under the Cooperative Societies Act, to direct a cooperative society to admit as a member, a person who does not qualify to be a member as per the bye-laws registered under the Act. Nor can a Registrar direct in terms of Section 14 of the Act to amend the bye-laws since it could not be said that such an amendment, as directed in this case is necessary or desirable in the interest of the Appellant society. What is relevant u/s 14 of the Act is the interests of the society and the necessity in the context of that interest. It is not the interest of an individual member or an aspirant to a membership.

47. While considering the similar controversy I have occasion to consider the some of the aforesaid judgments of Apex Court in an identical case in a Writ Petition No. 1199 (S/S) of 2007 decided on 21.2.2007 and it has been held that writ petition against the order passed by the Manager of a private institution shall not be maintainable.

48. Keeping in view the various recent judgments of the Constitution Bench and other judgments of Apex Court, referred hereinabove, it appear that merely

grant of financial aid to an institution shall not be an exclusive ground to hold that a body is a State under Article 12 of the Constitution of India as held in the case of *Gee Telefilms Limited* (supra). Only those authorities may be treated as a State, which have been created by law and which have got statutory right to make laws, rules and regulations. The Committee of Management of a private institution though receives grants in aid but it is not created by law and does not have power to frame rules and regulations to regulate the service conditions of its employees. Power vesting in the office bearers of the Committee of Management is confined to their competence to discharge duty under the Society's Registration Act or byelaws of the society. Conditions of employment are regulated by regulation framed under the U. P. Intermediate Education Act. State Government is only regulatory body and does not possess right to interfere in day-to-day functioning of a recognized institution, may be getting grant-in-aid. Government lacks deep and pervasive control.

49. It has been held by Supreme Court in the case of *Zoroastrian Cooperative Housing Society Limited* (supra) that a voluntary association constituted by its members governed by its own bylaws and not by statutory provisions shall not be an "authority" within the meaning of Article 12 of the Constitution of India. Of course a mandamus may be issued against a private institution in case any controversy arises with the element of public interest and not otherwise. A purely private dispute between the management and employees should be adjudicated by statutory provisions contained in the Act, Rules and Regulations or by a competent court in regular suit.

50. It is not necessary to consider other cases and grounds raised by the rival parties as prima facie it appears that writ petition is not maintainable on account of disputed question of fact as well as because of its non-maintainability. It shall be open to the parties to raise grounds relating to the validity of the impugned order before appropriate forum or by preferring a regular suit in case they are advised to do so.

Statutory alternative remedy

51. State Government through grant-in-aid pays salary to teachers and other staff. In case the services of a person has been wrongly dispensed with, District Inspector of Schools has got power under the provisions contained in U. P. High School and Intermediate Colleges (Payment of Salary of Teachers and Other Staff) Act, 1971 (in short hereinafter referred as the Payment of Salary Act) to take appropriate action. Accordingly, in case the Petitioner was appointed against regular vacancy on probation and his services were dispensed with without prior approval of the District Inspector of Schools then he may approach to District Inspector of Schools to ventilate his grievance. The District Inspector of Schools has got ample power to take a decision after providing opportunity of hearing to the parties. In case, he or she finds that termination is bad on the ground argued by the Petitioner's counsel, then he or she may place the institution under single hand operation or take punitive action in pursuance to Sections 5 and 6 of the

Payment of Salary Act. Aggrieved party has got right to prefer an appeal before the Regional Deputy Director of Education u/s 7 of the Payment of Salary Act.

52. In pursuance to power conferred by Section 6 of the Payment of Salary Act, the District Inspector of Schools has got ample power to supersede the management and take other coercive actions. District Inspector of Schools may also recommend for appointment of authorized controller by the State Government in pursuance to provisions contained in Section 16 (D) of the U. P. Intermediate Education Act. In case State Government feels that services of the Petitioner have been dispensed with illegally and order of District Inspector of Schools has not been complied with and management is not discharging its statutory obligations, the authorized controller may be appointed u/s 16 (D) of the U. P. Intermediate Education Act.

53. Needless to say that in case Petitioner approaches the District Inspector of Schools or any other competent authority to ventilate his grievance then District Inspector of Schools or the competent authority may decide the controversy after providing opportunity of hearing to the parties. District Inspector of Schools may also pass an interim order in case he or she prima facie satisfied that services have been terminated on unfounded facts and impugned order suffers from substantial illegality. Needless to say that the District Inspector of Schools shall peruse the original records and thereafter may record a finding relating to the genuineness of claim of rival party relating to Petitioner's appointment.

54. However, in any case, if the District Inspector of Schools or the competent authority fails to decide the controversy because of disputed question of fact, even then, the Petitioner would have got alternative remedy to prefer a regular suit in the competent civil court where the parties may lead evidence to establish their claim.

55. Appointments in the clerical cadre of recognized institution are made in accordance to provisions contained in Regulation 100 of Chapter II of the Regulations framed under the U. P. Intermediate Education Act. For convenience, Regulation 100 of Chapter III of the U. P. Intermediate Education Act is reproduced as under:

56. Under Regulation 100 of Chapter III of the U. P. Intermediate Education Act, a definite procedure has been given by Legislature to make selection and appointment of a candidate. Burden lies on the Petitioner to establish that he was appointed in accordance to rules after due advertisement of vacancies.

All these aspects of the matter may also be considered by the District Inspector of Schools or the competent civil court in regular suit, as the case may be.

57. In view of discussions, made hereinabove, and the recent laws on the question involved in the present writ petition, a writ petition under Article 226 of the Constitution of India against an order passed by the Manager of a Committee of Management while suspending or dismissing an employee shall ordinarily be

not maintainable. It shall always be open to the employee to ventilate his grievance approaching the competent authority under the U. P. Intermediate Education Act and Regulations framed thereunder or the Payment of Salary Act.

58. Though the writ petition was admitted long back but since a disputed question of fact is involved in the controversy in question and the writ petition cannot be disposed of on the basis of admitted material on record, the jurisdiction of Article 226 of the Constitution of India may not be exercised. In the present case there exists serious dispute between the parties relating to nature and mode of appointment. The Respondents have denied signatures and writings of the manager and its authorities. On account of serious dispute relating to relevant factual position the controversy in question cannot be adjudicated under extraordinary remedy of Article 226 of the Constitution of India.

59. As discussed hereinabove, Petitioner has got alternative remedy to approach the competent authority or file a regular suit to ventilate his grievance. The appropriate authority, after perusal of the original records and providing opportunity of hearing to the parties, may take a decision in accordance to law. In any case appropriate authority or District Inspector of Schools is not able to decide the controversy because of disputed question of facts, the aggrieved party may approach the competent civil court through regular suit. However, it is clarified that the competent authority or the civil court while adjudicating the controversy shall not be influenced by the observation made in the present judgment relating to the factual dispute between the parties.

60. In view of above, present writ petition is not maintainable and is liable to be dismissed with option to the Petitioner to avail alternative remedy. However, parties shall maintain status quo as exists today for the period of three months so that during the period Petitioner may avail alternative remedy to ventilate his grievance.

61. Subject to observation and direction, made hereinabove, writ petition is dismissed. No order as to costs.