

(1976) 10 AP CK 0011
In the Andhra Pradesh High Court

Osmania College	Vs	APPELLANT
D.V. Subba Sastry and Others		RESPONDENT

Date of Decision : 15-10-1976

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16, 226, 30

Citation : (1977) 2 LLJ 487

Hon'ble Judges : Sambasiva Rao, J; Madhusudhan Rao, J

Bench : Division Bench

Judgement

Sambasiva Rao, J.—The first and the principal point that was debated before us in writ appeal is about the correctness of Harijander Singh Vs. Selection Committee, Kakatiya Medical College, Warrangal and Another, Sri Shiv Shanker appearing for the appellant has mounted a severe criticism on the correctness of the view taken by the Full Bench in that case and said that in any event it has ceased to be good law in view of what the Supreme Court decided in later cases. Though other questions did arise, this point occupied substantial portion of the arguments.

2. This is how the matter arose. The appellant is the Osmania College, Kurnool, represented by its correspondent. It is affiliated to Sri Venkateswara University, Tirupati, which is the 4th respondent. There is no dispute that it is an institution of a minority community which gets the protection of Article 30 of the Constitution. It is recognised by the Government of Andhra Pradesh and has been receiving full teaching grant. Respondents 1 and 2 are lecturers in the Telugu department of the college. The first had been in service for nine years and the second for eight years before the filing of the writ petition. Saying that there would be fall in the work-load in the following academic year, the Managing Committee of the appellant-college passed an order on 16th of March, 1968 retrenching respondents 1 and 2 from service. This retrenchment was questioned by the respondents 1 and 2 in Writ Petition No 2801 of 1968 in this Court, Simultaneously they invoked the provisions of Clause 10 of the contract of

service which they entered into with the college management and which provided for an appeal to the Syndicate. As a condition of affiliation, the University laid down certain conditions of service for teachers serving in the affiliated colleges. While admitting the writ petition this Court granted an interim direction not to retrench respondents 1 and 2. It was also later directed that the salaries of respondents 1 and 2 should be paid within 15 days. Gopala Rao Ekbote, J (as he then was), granted a direction, while finally disposing of the writ petition on 13th April, 1970 that the respondents 1 and 2 should be continued in service until the Syndicate disposed of the appeals preferred by them. There was no appeal against that decision as a consequence of which Justice Ekbote's decision became final. The Syndicate of the University thereafter allowed the appeals of the respondents 1 and 2 and directed the appellant to continue them in service.

3. The college committee did not stop here. Saying that the evening session of the college was going to be closed, it passed a resolution on 28th April, 1970 to the effect that the services of the respondents 1 and 2 would not be required and would, therefore, be terminated. This was challenged by respondents 1 and 2 in W.P. No. 3499 of 1970 who also preferred appeals to the Syndicate of the University. Pending the writ petition they were continued in service by an order of this Court. This was resisted by the appellant on the ground that the respondents 1 and 2 were appointed to the evening college and as it was going to be closed they could not seek continuance in service. Madhava Reddy, J., by his decision dated 25th September, 1970 finally disposed of the writ petition holding that the appointment of respondents 1 and 2 was not for the evening session and even if the evening college or session was closed down, the services of respondents 1 and 2 could not be terminated in the circumstances of the case. As was done on the previous occasion, this time also a direction was given that the respondents 1 and 2 should be continued in service until the Syndicate disposed of the appeals which were preferred before it by the respondents 1 and 2. This time an appeal was preferred in W.A. No. 269 of 1971 by the appellant against the decision of Madhava Reddy, J., it was, however, dismissed by a Division Bench on 25th October, 1971. In the meanwhile the Syndicate of the University allowed the appeals of the respondents 1 and 2 and directed the college committee to continue them in service. The Director of Public Instruction, Andhra Pradesh, who is the 3rd respondent before us, intimated the appellant-college that the Government was prepared to bear the expenditure incurred by the college for continuing the respondents 1 and 2 in service.

4. The college committee, however, did not rest content with this. It filed W.P. No. 4078 of 1971 questioning the resolutions of the Syndicate dated 23rd July, 1971, under which a direction to continue the respondents 1 and 2 in service was given. Vaidya, J., by his order dated 28th April, 1972 dismissed this writ petition as not maintainable. The college committee once again preferred an appeal against this decision in W.A. No. 169 of 1972. In the appeal a contention was raised that Clause 10 of the agreement of service violated the provisions of Article 30(1) of the Constitution, under which certain rights were assured to the

minorities in the matters of establishing and administering educational institutions. Gopal Rao Ekbote, C.J. and Madhava Rao, J., dismissed the said W.A. No. 169 of 1972. The college committee persevered in seeking special leave from the Supreme Court to prefer an appeal against the decision in the writ appeal, after unsuccessfully trying to secure leave from the High Court itself. But the same was rejected by the Supreme Court as well. During the pendency of the Writ Appeal No. 169 of 1972, as the resolution of the Syndicate was suspended, the respondents 1 and 2 were thrown out of service for a short period. But on the dismissal of the writ appeal they were again reinstated. After the resolution of the Syndicate dated 23rd July, 1971, the appellant-college requested the University Syndicate to permit them to continue one Mr. M. Dawood as a Telugu lecturer in the college. The Syndicate on this request directed the college to implement its resolution dated 23rd July, 1971 in the first instance before a request for continuance of Mr. Dawood was made. Nonetheless, the appellant-college did not choose to entertain the respondents 1 and 2 in service. Consequently, respondents 1 and 2 filed Writ Petition No. 6142 of 1974 for directing the appellant-college to implement the orders of the Syndicate dated 23rd July, 1971 and to allow them to function as lecturers in the Telugu department. They also sought a direction for payment of their salaries and arrears of salaries commencing from 7th February, 1973. By virtue of the interim orders passed by this Court in W.P. M.P. No. 9734 of 1974, respondents 1 and 2 were readmitted into service and were paid their salaries. Writ Appeal No. 909 of 1974 was filed by the college against that interim direction but that was also dismissed on 19th December, 1975. As no salaries were paid to them, the respondents 1 and 2 were obliged to move this Court in W.P. No. 6099 of 1975 for a direction to pay their salaries and arrears of salaries due to them. This Court granted an interim direction on 15th September, 1975 for payment of these emoluments. Respondents 1 and 2 maintained in the writ petition that the appellant-college was bound to implement the resolution of the Syndicate directing their continuance in service.

5. The appellant resisted the writ petition by urging that the college is ran by a minority community with the aid of a society registered under the Societies Registration Act, 1860 and that no writ could be issued against such a society as it is a private body. Further, issuance of a writ in the terms prayed for by respondents 1 and 2 would amount to enforcing the contract of service which cannot be done under the law. The claim of the respondents 1 and 2 was also opposed on the ground that a direction of the nature sought by them would interfere with the fundamental rights guaranteed to the minorities under Articles 30(1) of the Constitution to establish and administer educational institutions. On the merits the college submitted that the workload did not justify the continuance of respondents 1 and 2.

6. Our learned brother Madhava Reddy J. repelled all these contentions. He found that the appellant-college was a public body and following the decision of the Full Bench in Kakatiya Medical College case, (supra) he held that a writ petition was

maintainable and a writ could be issued. He repelled the argument that granting a direction as prayed for by respondents 1 and 2 would amount to enforcing the contract of service. The learned Judge held that it was only implementing an order of the Syndicate which was passed in an appeal preferred under Clause 10 of the contract of service between the parties. Farther the order pasted by the University Syndicate, which is sought to be implemented in the writ petition, is one which comes within the scope of Section 9(2) of the Andhra Pradesh Recognised Private Educational Institutions (Control) Act, 1975. For that reason also a direction could be issued to implement such an order. It was also riled by our learned brother that such a direction ii not repugnant to Clause (1) of Article 30 and in fact the contention was already decided by a Division Bench in W.A. No. 169 of 1972. The argument that there was no workload justifying the continuance of respondents 1 and 2 also did not find acceptance at the hands of the learned Judge. On the basis of these findings the writ petition was allowed. The present writ appeal is against this decision of Madhava Reddy, J.

7. Sri P. Shiv Shanker, appearing for the appellant-college railed four contentions while commending the appeal for our acceptance. They are:

(1) The college is not a statutory body and is not governed by any rules or regulations framed under the statute. So, it is not amenable to the jurisdiction of this Court under Article 226 and a writ petition is not maintainable.

(2) What is sought to be enforced and implemented by respondents 1 and 2 is the master and servant relationship based on a contract of service. Such a contract cannot be enforced specifically even in a suit, let alone a writ petition. The only remedy available to the respondents 1 and 2 if these was a breach of contract of service, is only by way of damages.

(3) Sections 3, 5 and 12 of the Andhra Pradesh Recognised Private Educational Institutions (Control) Act of 1975 in so far as they purport to apply to the institutions of minorities, are violative of Article 30 So, it will nave to be declared that these provisions would not apply to minority institutions. To issue a direction as sought by the respondents 1 and 2 would be violative of Article 30(1).

(4) This is a minority institution within the meaning of Articles 30 and so, we should not exercise one extraordinary jurisdiction to interfere with the administration of such as institution.

8. We would like to notice, at the out set of our discussion, the finding given by Madhava Reddy, J., in regard to the absence of enough workload justifying the retrenchment of respondents 1 and 2. Even in W.P. No. 3499 of 1970 the same contention was urged but was not accepted by the Court. Later the reason was slightly changed by saying that the respondents 1 and 2 were appointed to the evening session and since that was closed, they had no more work to do. But it was found by this Court even on the earlier occasion, that the respondents 1 and 2 were appointed not to any particular session of the college but were inducted into service of the college itself. So, their continuance would depend upon the

workload which obtains in the college, be it in the day session or in the evening session. The respondents 1 and 2 asserted and the appellant did not deny, that even after the resolution of the Syndicate dated 23rd of July, 1971 five vacancies in the teaching staff arose on account of two lecturers resigning and three retiring. The college committee filled three out of these five vacancies by fresh candidates after calling for applications. It is, therefore, futile to urge that there was a fall in workload and the services of respondents 1 and 2 would not be required. It may also be noted that even after the three vacancies were filled up, two more were remaining. Justice Madhava Reddy, for these reasons, pointed out that if there was no work-load, three fresh candidates would not have been appointed and if there was work-load, only for three, only one fresh candidate in addition of the two respondents should have been appointed. The learned Judge pointed out that the appointment of fresh candidates in spite of the resolution of the Syndicate to continue respondents 1 and 2 in service, constituted a violation of the conditions of affiliation and the resolution of the Syndicate. It was also noted that the college did not show that there was no enough work-load for the two respondents. Therefore, the learned Judge came to the conclusion that there was no justification for the stand taken by the committee that the resolution of the syndicate could not be implemented for the reason that there was no work-load. It is a finding of fact which was recorded by the learned Judge on the basis of undenied and admitted facts. This would show that the college committee was not inclined to continue the respondents 1 and 2 in service, not for lack of work-load but for other extraneous reasons which could not be visualised. Further having itself selected and appointed the two respondents, the college committee has fought the claim of the respondents 1 and 2 to be continued in service with great tenacity by filing writ appeals, Supreme Court leave applications and special leave applications as well. Having failed on merits and also on legal contentions, it has to be taken recourse to technical objections. However, if the technical objections are sound and valid, they will have to be upheld whatever might be the unreasonable attitude of the college management with reference to these respondents.

9. The first and foremost objection raised to the present writ petition is that no writ petition lies and no writ can be issued against a college which is simply a private body. Madhava Reddy, J., followed the decision of the Full Bench in Kakatiya Medical College case (*supra*). It is for the purpose of shaking the authority of the Full Bench. Sri Shiv Shanker, argued at great length in order to persuade us not to follow it.

10. Sri Shiv Shanker's endeavour was to show that writs can be issued under Article 226, apart from Governmental and quasi - Governmental authorities, only against statutory bodies and not private bodies like the appellant-college. By no stretch of imagination is this college a statutory body since a statutory body is one which is created in pursuance of a statute made for that purpose and whose activities and affairs are governed by the provisions thereof. On the other hand, this college is purely a private body as it has been started and is being

administered by a committee which has been registered under the Registration of Societies Act. In the submission of the learned Counsel our brother Madbava Reddy, J., erred in following the Kakatiya Medical College case (supra) and in holding that this college is a public body and writ petitions are maintainable and writs can be issued under Article 226 against such public bodies. It was sought to be pointed out that the Full Bench is contrary to the earlier decisions of the Supreme Court on the subject and in any case decisions of that Court rendered subsequent to the Full Bench decision lay down the law quite contrary to the view of the Full Bench. Learned Counsel, therefore, maintained that the Full Bench decision must be deemed to have been overruled by necessary implication, by the later Supreme Court decisions.

11. It was contended by Sri Babul Reddy, who appeared for respondents 1 and 2, that this college is not a statutory body. He, however, urged that it is a public body.

12. Let us recapitulate some of the salient features of the college. Though this has been started and is being administered by a society registered under the Registration of Societies Act, it has been affiliated to Sri Venkateswara University ; it has been recognised by the Government of Andhra Pradesh and has ever since that recognition been receiving full teaching grants. Indeed, from the facts placed before us, it is manifest that what the management committee has been paying and, will have to pay respondents 1 and 2 as their emoluments are from the teaching grants given by the Government of Andhra Pradesh. As a condition of affiliation, the University laid down certain conditions of service for teachers serving in the affiliated colleges, and since this institution is one of the affiliated colleges it is bound by the conditions of service for teachers prescribed by the University, in fact in pursuance of these conditions it has entered into contracts of service with respondents 1 and 2 and other teachers. Therefore, there is no doubt that this college, though a minority institution, is governed by the general code of conduct prescribed by the University to which it is affiliated and in a large measure draws its sustenance and finances from the State, that is to say, public funds. It is also undisputed that an overwhelming majority of the students in this institution are drawn from non-Muslim communities, and likewise, the teaching staff also consists of a majority of non-Muslims. Though admittedly and undoubtedly it is a minority institution, in the sense that it was started and is being administered by a Society consisting of representatives of the Muslim community, which is a minority of, it is certainly not a cloistered or secluded sanctuary. It depends, for its finances, on public funds and depends upon not merely the Muslim community but all communities at large for its students and teachers and is affiliated to and regulated by Sri Venkateswara University. Thus its public character is writ large on every facet of the institution.

13 The Full Bench of this Court in *Harijander Singh v. Selection Committee, Kakatiya Medical College*, (supra) opined that the Kakatiya Medical College though privately run, is affiliated to the Osmania University and receives grants

from the State of Andhra Pradesh. Therefore, it is a public body which discharges public duties. Consequently the ambit of certiorari can be said to cover every case in which a body of persons of a public, as opposed to a purely private or domestic character, has to determine matters affecting the subjects, provided of course, that it has a duty to act judicially. The term "judicially" would now include quasi-judicially or fairly. It can sometimes even be implied, it is usually implied when the action affects in the broad sense rights or interests of the subjects. It would include administrative acts of such character which affects the rights or interests of citizens and in which they are in any case required to act, openly, fairly and impartially. Proceeding further the Full Bench explained the nature of a writ of mandamus. It is a writ which commands a public body to perform a public duty imposed on it by law, mandamus is not limited to judicial acts. The remedy of mandamus is discretionary. Thus, there must be a legal right existing in the petitioner and a corresponding legal duty upon the public officer or authority in order to issue a mandamus. Though the Full Bench also explained the ambit of certiorari, it is not now necessary for the purpose of this case to go into that aspect, because the relief sought by respondents 1 and 2 in the writ petition is in the nature of a mandamus directing the college to implement the order or resolution of the Syndicate of the University.

14. Sri Shiv Shanker assailed this view saying that it is contrary to the earlier decisions of the Supreme Court in *State of Assam and Another Vs. Ajit Kumar Sharma and Others*, and *Shri Vidya Ram Misra Vs. Managing Committee, Shri Jai Narain College*, and other decisions, it is not as if the Full Bench did not advert to these two and other earlier decisions of the Supreme Court. Indeed, it examined them in great depth. We will now point out how the Full Bench has considered these decisions.

15. In *Vidya Ram v. S.J.N. College (supra)*, a Lecturer appointed by the managing committee of the college affiliated to Lucknow University was dismissed by the managing committee. This dismissal was challenged in a writ petition under Article 226 objecting to the same that the principles of natural justice had been violated. The High Court rejected this writ petition holding that the relationship between the lecturer and the college was that of master and servant and even if his services were terminated in breach of natural justice the remedy lay in a suit for damages and not under Article 226. An appeal was preferred to Supreme Court by the unsuccessful lecturer. The Supreme Court referred to its earlier decisions in *Executive Committee, U.P. Warehousing Corporation Vs. Chandra Kiran Tyagi*, , and *Halim Mian and Others Vs. State of Bihar*, , and following them it held that since the relationship was a master and servant, even if the master wrongfully dismissed the servant the employment was effectively terminated. The Supreme Court also referred to *Vidyodaya University v. Silva* [1964] 31 All E.R. 365 and held that a teacher appointed by a University constituted under a statute did not hold an office or status. It was also held that the college or the managing committee is not a statutory body and so the argument that the case will fall under the third exception cannot be accepted. It was found that it was

necessary that the statutory body must violate statutory provision. The Supreme Court distinguished its earlier decision in *Prabhakar Ramakrishna Jodh Vs. A.L. Pande and Another*, , on the ground that the terms and conditions in Clause 8(6) had the force of law and had conferred rights on the appellant.

16. After noticing all these decisions and the propositions laid down therein by the Supreme Court, the Full Bench proceeded to refer to *State of Assam and Another Vs. Ajit Kumar Sharma and Others*, and pointed out that it was also to the same effect. Having noticed all these earlier decisions of the Supreme Court, the Full Bench expressed the view that the authority of *Ajit Kumar's* case (supra) and that of *Vidya Ram's* case (supra), was considerably shaken by the later decision of the Supreme Court in *Anal Chandra Banarjee Vs. The State of West Bengal*, . It was pointed out that the *Sirsi Municipality's* case referred to three categories of employment the third of which was that between master and servant in employment "of the State or of the public or legal authorities or bodies created under the statute." The following passage from *Sirsi Municipality's* case was then extracted.

When a public body is empowered to terminate employment on specific grounds or when a public body does not observe the procedure laid down by the Legislature, i.e., improperly delegates power of dismissal to another body the Courts have declared such dismissal from public employment is to be invalid.

The decision in the *Sirsi Municipality's* case (supra), was that the dismissal or termination of the services of the employees without complying with the provisions of the statute, scheme or order is invalid. The dismissal will be invalid if it is contrary to the bye-laws or to rules of natural justice. Then *Gopal Rao Ekbote, C.J.*, delivering the view of the Full Bench states this in paragraph 78:

This decision (*Sirsi Municipality's* case), if we may say so, makes a notable breakthrough and is an important land mark in the growth of the administrative law, it removes the effects of the abovesaid two earlier decisions of the Supreme Court and revises the position of law as it existed before the said two Supreme Court decisions. Now the employees not only of the state but also of statutory bodies, public, and local authorities can avail of the protection which Article 226 provides, if they point out any violation of a delegated legislation or scheme or order or bye law or breach of natural justice. A large number of employees who were denied access to the High Court for redressal of their grievance have now been again brought under the protective umbrella of Article 226.

17. It can immediately be seen from the above that the Full Bench decision in *Hurijander Singh's* case, A.L.T. 192 which is binding on us sitting in a Division Bench, fully considered not only *Vidya Ram's* case (supra) and *Ajit Kumar's* case (supra) but also all the other connected decisions and then followed the later decision in *Sirsi Municipality's* case (supra). We cannot, therefore, say that the Full Bench decision should not be followed because It is contrary to the earlier decisions of the Supreme Court.

18. Then the question is whether the view of the Full Bench has been overruled either explicitly or by necessary implication by any later decision of this Court or that of the Supreme Court, it is common ground before us that there was no overruling of this decision explicitly. The only attempt of Mr. Shiv Shankar is that the said view must be deemed to have been overruled by necessary implication by the Supreme Court in its later decisions.

19. The first decision referred to by the learned Counsel is Sabhajit Tewary Vs. Union of India (UOI) and Others, . We are afraid that this has no bearing on the problem because it is a decision in a writ petition filed directly in the Supreme Court under Articles 32. A writ was sought against the council of Scientific and Industrial Research, a society registered under the Societies Registration Act. The Supreme Court, held that the society does not have a statutory character and did not, therefore, come within the ambit of the expression "other authorities" occurring in Article 12. Therefore, this is a case which arose under Article 32 and the question was whether the council, which was the respondent therein, was an authority within the meaning of Articles 12. So this decision throws as light on the problem on hand.

20. The next one is the decision of a Constitutional Bench in 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, . The two questions there as posed by the learned Chief Justice, who spoke for himself, Chandrachud and Gupta JJ., were whether an order of removal from service contrary to regulations framed under the Oil and Natural Gas Commission Act, 1959, the Industrial Finance Corporation Act, 1948, and the Life Insurance Corporation Act, 1956 would enable the employees to a declaration against the statutory corporations of continuance in service or would only give rise to a claim for damages, and whether an employee of a statutory corporation is entitled to claim protection of Articles 14 and 16 against the corporation. In short the question was whether these statutory corporations are "authorities" within the meaning of Article 12. The majority view was that these are statutory corporations and to, are "authorities" within the meaning of Article 12. Therefore, the employees have a statutory status and are entitled to a declaration of being in employment, when their dismissal or removal is in contravention of the statutory provisions. It was also held that the regulations framed under the statutory provisions have also the force of law. The question, therefore, before the Supreme Court is in a narrow compass, and that is whether the statutory corporations are "authorities" within the meaning of Article 12 and whether the employees thereof are entitled to a declaration of being in employment when their dismissal or removal is in contravention of the statutory provisions. Nothing said in the majority view detracts from the main principle of the Full Bench decision of this Court. The question as to whether such colleges are public bodies or not, whether they discharge public duties or not and whether their employees are entitled to the protection of Articles 226 or 285 were neither in dispute nor under consideration

in the said case. Therefore, it would not be possible to say that by necessary implication this decision has overruled this Court's Full Bench decision.

21. Executive Committee of Vaish Degree College, Shamli and Others Vs. Lakshmi Narain and Others, is the next decision. The executive committee of Vaish Degree College, which was registered under the Registration of Co-operative Societies Act, preferred the appeal to the Supreme Court. The Executive Committee managed the affairs of the college. The respondent was appointed as Principal of the College on a permanent basis. On account of some differences between him and the management he was directed not to discharge the duties of the principal. The respondent sent a counter notice challenging the legality of the notice sent to him by the management. Thereupon the services of the respondent were terminated. The respondent thereafter filed a suit. The question was whether declaration or injunction could be granted in favour of the respondent by the Civil Court. The Full Bench held that since the college was a statutory body, it was bound by the provisions of the University Act and the termination of the service of the respondent without obtaining the sanction of the Vice-Chancellor was illegal and invalid. It also held that the respondent was entitled to an injunction as prayed for in the circumstances of the case. In that view, the suit was decreed against the college management, in the Executive Committee's appeal, the Supreme Court pointed out the distinction between a statutory body and a non-statutory body. A statutory body is one which is created by or under a statute and owes its existence to a statute. On the other hand, if a body is merely governed by certain statutory provisions for the proper maintenance and administration of the institution, it is not sufficient to clothe the institution with a statutory character. In that view, it was decided that Vaish Degree College was a non-statutory body. Therefore, the majority, whose opinion was expressed by Khanna, J., held that the case of the principal there did not fall within any one of the exceptions to the rule of non enforceability of a contract of service and, therefore, the plaintiff was not entitled to any declaration or injunction. Bhagwati, J., in a separate judgment said that where the termination is outside the powers of a statutory body either because the statutory body has no power to terminate the employment or because the termination is effected in breach of mandatory obligation imposed by law which prescribes that the termination shall be effected only in a particular manner and no other, it would be a nullity and the employee would be entitled to ignore it and ask for being treated as still in service. Once again the problem whether a writ petition is maintainable under Article 226 against a public body was not considered in this case. In fact, the case arose out of a suit and the question was whether a particular relief or injunction relating to a private contract of service could be granted. The view taken by the Full Bench of this Court has not been shaken and in fact not even adverted to in that decision since there was no occasion to do so.

22. In *Arya Vaidya Sabha, Kashi v. K.K. Srivatsava* 1976 II L.L.J. 395 : AIR 1976 S.C. 1076, a private college was affiliated to the Benaras Hindu University. An employee of the college was dismissed by the management. The question arose

whether the Court could order reinstatement of such an employee. Applying the principle enunciated in *Vaish Degree College case* (supra) and reversing the decision of the Allahabad High Court in *K.K. Srivatsava v. Arya Vaidya Sabha*, (supra) the Supreme Court held that the institution was not a creature of a statute but an entity like a company or a co-operative society which came into existence under the operation of the statute and the dismissed servant cannot be ordered to be reinstated, it is true that in this case the Court held that it was not a statutory institution. But the question was whether the reinstatement of a dismissed servant could be ordered. It should be noted that excepting in well recognised exceptions, reinstatement of a dismissed employee cannot be decreed even in a suit. In any case, the question whether writ jurisdiction can be exercised against public bodies in discharging public duties was not in issue before the Court. There is thus nothing in this; case which affects the principle laid down by the Full Bench in *Harijander Singh's case* (supra).

23. Lastly, the decision of the Supreme Court in C.A. No. 747 of 1975 dated 18th March, 1976 was brought to our attention. The first question posed by Krishna Iyer J., who rendered the decision of the Court was whether under Article 226 a writ may issue against a co-operative society setting aside a selection list at the instance of the aggrieved candidates who were not included therein. The High Court held the writ petition to be incompetent on the ground that it was directed against a co-operative society. The appeal was dismissed by the Supreme Court on the short ground that the writ petition, out of which the appeal arose, was to enforce & simple contract between the staff and the society and, therefore, the remedy of Article 226 was not available to enforce such a contract. At the same time, Krishna Iyer, J., made certain observations which we should notice here. Incidentally a reference was made to the question whether a co-operative society was a "public authority". However, the question was not decided because, though many rulings were placed before the Court, it was not necessary in that case. It was further pointed out that what was immediately relevant to the case was not whether the respondent was State or public authority but whether what was enforced was a statutory duty or sovereign obligation or public function of a public authority. It was also noticed that Article 226 had a wide amplitude and that its potent use widens so far as to correct manifest injustice. In the light of the conclusions and these observations, we feel that this decision does not affect the validity of the Full Bench decision in *Harijander Singh's case* (supra).

24. It is true that the *Sir sirsi Municipality's* a case (supra) also arose out of a suit. All the same the Full Bench considered all the decisions of the Supreme Court which bear on the point and felt that the Supreme Court blazed a new trail in that case on this branch of law. As we have endeavoured to show, the later pronouncements of the Supreme Court do not say anything which is contrary to the scope of the writ jurisdiction propounded by the Full Bench. As a Division Bench we are bound to follow the Full Bench decision of this Court.

25. In W.P. No. 2203 of 1973, *Lakahmaiah, J.*, in his decision dated 18th June,

1975 referred to this decision. But the learned Judge distinguished it on the facts of the case. However, a Division Bench of the Delhi High Court followed the Full Bench decision in *Kumkum Khanna v. Principal Jesus and Mary College* AIR 1976 Delhi 33, for holding that a Principal of a private college affiliated to Delhi University is a public authority within the meaning of Article 226 and, therefore, a writ petition is maintainable against him in respect of the exercise of his statutory powers and discretion.

26. So, following the Full Bench decision in *Harijander Singh's case* (supra), we hold that the writ petition is maintainable against the appellant-college since it is a public body though not a statutory body.

27. The second contention is that the writ petition is, in essence, a petition seeking mandamus to enforce the master and servant relationship between the appellant, college and respondents 1 and 2, and such a contract cannot be enforced through a writ petition and for that matter, even in a suit. The only remedy is to seek damages for breach of service of contract in a suit. It was also argued that a mandamus could be issued only to enforce a public right which enjoins a corresponding public duty on the authority and by no stretch of imagination a request made by the University Syndicate in its resolution to continue respondents 1 and 2 in service could create a public right in respondents 1 and 2 and a corresponding duty on the college. The observations in the Full Bench in *Harijander Singh's case* (supra) in regard to the nature of mandamus in paragraph 44 were also brought to our notice. It was also urged that at best, the resolution of the University Syndicate partakes of an award in a private arbitration chosen by the parties to a proceeding and such an award cannot be enforced. None of these arguments appealed to our learned brother Madhava Reddy, J., nor are we persuaded to accept them.

28. It must be noted that the conditions of service of all teachers in affiliated colleges are regulated by the University. Sri Venkateswara University issued "conditions of service of teachers in the affiliated colleges". The first condition says that the numbers on the teaching staff of each department of an affiliated college shall not be less than the number prescribed in different grades by the University at the time of affiliation or from time to time. Condition 4 says that all posts required to be filled up in accordance with para. 1 shall be deemed to be permanent. Such posts may be abolished only with the prior approval of the University or in discontinuance of teaching of the subject concerned. Condition 8 lays down that the governing body and every teacher in a college shall mutually enter into a written contract according with the form of agreement laid down. One copy of such an agreement shall be handed over to the teacher along with a copy of the rules of service. According to condition 9 the said agreement shall state specifically the service conditions. Condition 10 lays down that a teacher appointed permanently shall ordinarily be entitled to service till he completes his 60th year. A form of agreement to be adopted by the managements in regard to service of teachers was also prepared. It was in pursuance of condition 8, written

contracts were executed between the appellant-college and respondents 1 and 2 when they entered the service. It is thus manifest that the written contracts did not arise out of a mere private employment but out of the conditions of service of teachers in affiliated college as required by the Sri Venkateswara University.

29. Even a look at these conditions would immediately demonstrate the anxiety of the University to see that the standard and quality of teaching and education in the affiliated colleges, be they minority institutions or other institutions are maintained at a particular level. They are only regulatory in nature and do not in any way interfere with the establishing or administering these institutions. Certainly, the University to which such colleges are affiliated, owes a duty to the student public to maintain a uniform standard and quality of teaching and education in all these colleges. A minority institution, which is entitled to the protection contained in Clause (1) of Article 30, cannot claim to sit on a different pedestal and disclaim all responsibility to abide by these regulatory requirements to maintain a level of teaching and education at a particular standard. Instead of affecting the interests of the minority community, these regulatory conditions enhance and protect their educational standards. If there are no sufficient number of teachers to man each department of a college and if their service conditions are uncertain and left to the whims and fancies of the management, there should be, apart from the personal inconvenience caused to the teachers, a grave threat to the level and standard of teaching in the educational institution. That is the purpose for which those conditions were laid down by the University and the appellant-college chose voluntarily to abide by them when it sought affiliation. It was in pursuance of condition 8 the contracts were entered into between the college management on the one side and the respondents 1 and 2 on the other. Clause 10, therefore, provided:

That in the event of either party to this agreement failing to observe the terms thereof, the aggrieved party shall have a right to appeal to the Syndicate of the S.V. University, Tirupati and the orders of the Syndicate shall be final and binding on the parties.

The parties voluntarily bound themselves to abide by the decision of the Syndicate in this behalf. That was why time and again respondents 1 and 2 approached the Syndicate simultaneously with filing of writ petitions in this Court, for a decision on the dispute arising out of termination of their services. Every time the Syndicate ruled that they shall be continued in service. Now what is sought to be enforced is the decision of the University Syndicate, rendered in the appeals preferred by respondents 1 and 2.

30. It is true that the University Syndicate used the word "request" in its resolution saying that the college management was requested to continue respondents 1 and 2 and that is why Sri Shiv Sharper built up the argument that the request could not be enforced. It is patent from a reading of the resolution that the request is clearly a decision made by the University Syndicate and that decision was rendered in pursuance of Clause 10 of the agreement which the

appellant-college and respondents 1 and 2 voluntarily entered into. That shows their remedy of going to a statutory body by way of appeal and it is that appellate decisions that is sought to be enforced. Consequently, it cannot be said that the writ petition only seeks the enforcement of a private contract of service.

31. Our attention was invited to the decision of *Vaish Degree College v. Lakshmi Naraiu* (supra) wherein it was held that a contract of personal service cannot ordinarily be specifically enforced and a Court normally would not give a declaration that the contract subsists. As we have pointed out, this is not enforcement of a contract of personal service but the decision of the University Syndicate in the appeal preferred by respondents 1 and 2. It is true that the University Syndicate, as a Syndicate, might not have rendered the decision. But the fact remains that it was constituted by the parties themselves as an appellate authority and it is his decision that is sought to be enforced now.

32. Madhava Reddy, J., also held that the decision of the Syndicate comes within the ambit of Section 5(2) of the A.P. Recognised Private Educational Institutions (Control) Act, 1975. That Act was made by the Audhra Pradesh Legislature to provide for terms and conditions of service of teachers in, and control over, the recognised private educational institutions in the State of Andhra Pradesh and for matters connected therewith. In the process of safeguarding the interests of teachers, the Legislature made Section 5 laying down special provisions regarding appeals and disciplinary cases. In Sub-section (1) it is provided that whenever any teacher in a private educational institution has been dismissed or removed or reduced in rank or his services have been otherwise terminated, an appeal may be preferred by him to the prescribed authority. Sub-section (2) says:

If any such appeal as is referred to in Sub-section (1) has been disposed of before the date of commencement of this Act, the order made in any such appeal shall be deemed to be an order made under this Act and shall have effect accordingly.

The appeal as agreed upon between the parties had already been preferred to the University Syndicate before the commencement of this Act on 15th of October, 1974. Therefore, applying the provisions of Sub-section (2) the learned Judge said that the order made in the appeal shall be deemed to be an order made under the Act and shall have effect accordingly and in that sense, it is a statutory order. There is considerable force in this view and the same reinforces the claim of respondents 1 and 2 for the issuance of a writ.

33. Further, Sri Babulu Reddy pointed out that the decision which is now sought to be enforced, is that of the University Syndicate which is certainly a higher authority than the college committee. As laid down by the Supreme Court in *The Bhopal Sugar Industries Ltd. Vs. The Income Tax Officer, Bhopal*, the Superior authority's orders must be obeyed by the lower authorities. In order to do so, the Supreme Court held in the above case that a writ of mandamus should issue to compel the subordinate authorities to carry out the directions given to them

by the higher authorities. The Supreme Court also pointed out that if the High Court declines to issue a writ in such cases on the ground that no manifest injustice had resulted, it would be destructive of one of the basis principles of the administration of justice. For these reasons, we are of the opinion that the second objection raised by Sri Shiv Shanker cannot be accepted and that justice Madhava Reddy is right in issuing the writ.

34. We may also refer to the decision of a Division Bench of this Court in W.A. No. 169 of 1971, preferred by the appellant-college against the decision of Vaidya, J. who had dismissed the appellant's Writ Petition No. 4078 of 1971 questioning the validity of the Syndicate's decision. There all these questions were raised and considered by the Division Bench. We see no reason to take a different view from that of the Division Bench.

35. The next contention we would like to deal with is that Section 3, 5 and 12 of the Andhra Pradesh Recognised Private Educational Institutions (Control) Act, 1979, are violative of the rights of the minority institutions enshrined in Article 30. Sri. P. Shiv Shanker's complaint is that these provisions strike at the very root of the right of the appellant to establish and administer its institution. According to him, these three provisions are of one piece and cannot apply to minority institutions in view of the protection given to them under Clause (1) of Article 30. We are not persuaded to accept this contention. As we have already pointed out, the aim of Section 8(2) is to maintain a uniform level and standard of teaching and education in all affiliated colleges. It is the University's prime function to maintain the excellence of teaching and training given in all its affiliated institutions. Teachers are the principal instruments of a college in imparting education and training. That is why the University, in its conditions, insisted on having a particular number of teachers for every department so that all these students in the department get adequate attention, education and training. The service conditions of the teachers are also part of the scheme to maintain the excellence of teaching. No minority institution can have any grievance at these regulatory conditions whose main object is to maintain the level of education.

36. Sri Shiv Shanker relied on *The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another*, . The impugned provisions therein deprived the minority community of the right to administer the institution they have founded. They conferred on the syndicate of the University the power to veto even the action of the governing body or the managing council in the selection of the principal. One of the provisions gave a right of appeal to the Syndicate to any person aggrieved by the action of the governing body thus making the syndicate the final and absolute authority in the matters. It is these sweeping provisions that were held to be by the Supreme Court as affecting the right of the minority institutions and so they were ultra vires of Article 30(1) in so far as they related to minority institutions.

37. Great stress was also laid on *The Ahmedabad St. Xavier's College Society*

and Another Vs. State of Gujarat and Another, . There also the impugned provisions were very sweeping in nature. For instance one of the provisions laid down that every college shall be under the management of a governing body which shall include amongst its members, a representative of the University nominated by the Vice-chancellor and representatives of teachers, non-teaching staff and students of the college. Such a provision was held by the Supreme Court to have the effect of displacing the management and entrusting it to a different agency and thereby the autonomy in administration is lost. Even in the case of recruitment of teaching staff and the principal, a representative of the University nominated by the Vice-Chancellor should sit in the selection committee. Since there was no indication and guidance in the Act as what type of persons could be nominated, it was held that the provision could not apply to minority institutions. Another provision provided that no member of the teaching staff of an affiliated college shall be dismissed or removed or reduced in rank except after an inquiry and the penalty to be inflicted on him has been approved by the Vice-Chancellor or any other officer of the University authorised by the Vice-Chancellor in this behalf. These are the provisions which were held by the Supreme Court as not having the character of permissive regulations since they conferred arbitrary power on the Vice-chancellor to take away the right of the administration of the minority institutions. It is difficult to hold that when the parties themselves agreed to refer a dispute to the University Syndicate and to abide by the decision of that Syndicate it would create arbitrary power or would interfere with the right of the minority community to administer its institution. It should be noted that the appellant is completely free to choose members of its teaching staff and in fact it so chose respondents 1 and 2. It was only when some members of the staff were sought to be discharged an appeal was made to the Syndicate as agreed upon between the parties. The appellant voluntarily agreed to abide by the decision of the Syndicate. By no stretch of imagination could it be said that this is interference with the administration of the institution by the Committee. The appellate decision of the Syndicate comes within the scope of Section 3(2). On the other hand, as pointed out by Chief Justice Ray, in the aforesaid decision, there is no fundamental right of a minority institution to affiliation to a University. When such an institution applies to University to be affiliated, it expressed its choice to participate in the system of general education and courses of instruction prescribed by that University. It agreed to follow the uniform courses of study. Affiliation is regulating the educational character and content of the minority institutions. These regulations are not only reasonable in the interest of general secular education but also conduce to the improvement in the stature and strength of the minority institutions. Therefore, measures which will regulate the courses of study the qualifications and appointment of teachers, the conditions of employment of teachers, the health and hygiene of students, facilities for libraries and laboratories are all comprised in matters germane to affiliation of minority institutions. These regulatory measures for affiliation are for uniformity, efficiency and excellence in educational courses and do not violate any fundamental rights of the minority institutions under Article 30. The

decision of the Syndicate comes clearly within the ambit of such regulatory measures intended to maintain uniformity, efficiency and excellence in the educational standards in the institution. The right of the State and the University to regulate education, educational standards and allied matters cannot be denied. The minority institutions cannot be allowed to fall below the standards of excellence expected of educational institutions, or under the guise of exclusive right of management, to decline, to follow the general pattern. While management must be left to them, they may be compelled to keep in step with others.

38. We may also refer to the decision in *The Gandhi Faiz-E-Am College, Shahjahanpur Vs. University of Agra and Another*, . There the University statute required that the management committee of a minority educational institution shall include the principal of the college and the seniormost member of the teaching staff. The validity of the provisions in the Agra University statutes was questioned. The majority view which was rendered by Krishna Ayyer, J., upheld such a provision as valid. Once again the learned Judge reiterated the view that Article 30 does not invalidate the provisions of a regulatory character which are intended to secure better administration of an institution and that the presence of these officers in the Managing Committee would ensure better administration of the college.

39. Since the teaching staff are an essential part of maintaining the excellence of a teaching institution, the University took care to regulate their conditions of service. The power to recruit teachers lies with the appellant-institution itself in an unqualified manner. Even in regard to disciplinary actions their power is undiluted. All the same, the college committee itself agreed to abide by the decision of the University Syndicate if any dispute arises. By no stretch of imagination, could such a decision of the Syndicate be said to be repugnant to the right of the minority institution in regard to the administration of the college. Therefore, Section 5(2) of the Act, to the extent that it is relevant for the purpose of this decision, cannot be held to be *ultra vires* the provision of Article 30(1) so far as minority institutions are concerned. It is not necessary for us to express any opinion in regard to the other provisions and also the general application of Section 5 to minority institutions.

40. What we have expressed is with reference to the facts of this particular case, and we shall not be understood as deciding the general question which has been very strongly pressed before us by Sri Shiv Shankar that Sections 3, 5 and 12 of the Act are repugnant to Article 30.

41. In any case, Sri Shiv Shankar argued that exercise of writ jurisdiction is discretionary and that it cannot be exercised against the minority institution. We cannot accede to this submission. A minority institution or any other institution is amenable to the writ jurisdiction and if it has violated certain basic recognised principles or rules and regulations, a writ can be issued. In this case, the appellant-college, as we have pointed out, has been denying to respondents 1

and 2 service in its institution on untenable basis. Time and again this Court and the University Syndicate found that there was no justification at all for the termination of the service or retrenchment of respondents 1 and 2. The reason assigned by the management was found to be wholly untenable. Still the appellant-college has been persisting in taking up legal proceedings though the Government have undertaken to pay the emoluments payable to respondents 1 and 2. Therefore it is a case where this Court should unhesitatingly exercise its extraordinary jurisdiction under Article 226 of the Constitution in favour of respondents 1 and 2 to correct the grave miscarriage of justice and also to see that a valid order of the University Syndicate is implemented.

42. For these reasons, we are in agreement with our learned brother Madhaya Reddy, J., In allowing the writ petition. The Writ Appeal is accordingly dismissed with costs. Advocate's fee Rs. 250.