
(1989) 02 BOM CK 0020
In the Bombay High Court
Case No : Writ Appeals No"s. 579 and 580/82

R. Jesudasan

APPELLANT

Vs

K. Selvaraj and others

RESPONDENT

Date of Decision : 07-02-1989

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 33, 33A

Citation : (1989) 02 BOM CK 0020

Hon'ble Judges : S. Nainar Sundaram, J; Bellie, J

Bench : Division Bench

Judgement

Nainar Sundaram, J.—These two writ appeals concern the controversy between a private school, of which the first-respondent is the correspondent-Secretary, and its Headmaster the appellant herein, who has been sent out of service. The statute that will govern the controversy is the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 (Tamil Nadu Act 29 of 1974), hereafter referred to as "the Act".

The facts require delineation as follows : On 9th April 1976, the Headmaster wrote a letter as follows :

"THE LAKSHMI MILLS HIGH SCHOOL

R. Jesudasan, B.A., B.T.,

Headmaster

Kovilpatti, Dated : 9.4.76.

To

The Correspondent,

Lakshmi Mills High School,

Kovilpatti.

Respected Sir,

Due to my family inconvenience, I am unable to continue here as Headmaster and I resign. Hence I request you to kindly relieve me at your earliest convenience.

Thanking you, Yours faithfully, (Sd.) R. Jesudasan 9.4.1976"

On the very same date, he wrote another letter, which ran as follows :

"THE LAKSHMI MILLS HIGH SCHOOL

R. Jesudasan, B.A., B.T.,

Headmaster,

Kovilpatti

Dated : 9.4.1976.

To

The Correspondent,

Lakshmi Mills High School,

Kovilpatti.

Respected Sir,

Due to my family inconvenience I am unable to continue in the Schools as a Headmaster. Hence, I request you to kindly relieve me at earliest convenience.

Thanking you, Yours Faithfully, (Sd.) R. Jesudasan, 9.4.1976."

On 10th April 1976, the resignation of the Headmaster was accepted by the private school and the Headmaster was relieved from duty. On 10th May 1976, the Headmaster preferred a complaint to the second-respondent, complaining that the letter of resignation were obtained from him under duress and threat and prayed for an order, directing his reinstatement. On 30th August 1977, the second-respondent, opining that, since the Headmaster tendered resignation and the same has been accepted by the private school, no appeal would lie, did not entertain the same and go into merits of the case. The Headmaster appealed to the third-respondent in C.M.A. No. 75 of 1977 and the third-respondent, by order dated 27th June 1978, expressed the view that the appeal is maintainable before the second-respondent, since a case of a teacher, going out of serving on resignation would also come within the set of expressions "otherwise terminated", occurring in Sections 22 and 23 of the Act, and remitted the matter back to the second-respondent for consideration of the merits of the case. The third-respondent, for arriving at this view, took note of the pronouncement of V. Balasubramanyam, J., in K. Rajeswari. v. T. P. Sankaran and another (S.A. No. 1607 of 1974, Judgment dated 25th November 1977 - concisely reported in 1977

TLNJ 537). The second respondent, pursuant to the above order of remand, went into the merits of the case and held that the Headmaster tendered his resignation voluntarily and the letter of resignation were not obtained from him under duress and in this view rejected the appeal of the Headmaster. The second-respondent also repelled the contention of the Headmaster that a prior approval, as contemplated u/s 22 of the Act, is required, on the reasoning that in the case of voluntary resignation the question of prior approval does not arise. The Headmaster preferred C.M.A. No. 66 of 1980 to the third-respondent. The third-respondent, on the question of the letters of resignation being taken from the Headmaster by exercise of threat or coercion, rendered a finding against the Head master. However, on the questions of prior-approval, as contemplated u/s 22 of the Act, the third-respondent held that even a case of a teacher going out of service on his own resignation would come within the set of expression "otherwise terminated", found in Section 22 of the Act, allowed the appeal of the Headmaster, setting aside the order of the second-respondent and consequently setting aside the order of termination, passed by the first-respondent, and gave the Headmaster the relief of reinstatement. The third-respondent also took note of the pronouncement of V. Balasubramanyam, J. in K. Rajeswari. v. T. P. Sankaran and another (supra). The private school filed W.P. No. 5757 of 1981, questioning the decision of the third-respondent in C.M.A. No. 66 of 1980. The Head master filed W.P. No. 10245 of 1981, questioning the finding of the third-respondent that his (Headmaster's) resignation was voluntary and not obtained by force. The learned single Judge, who heard the writ petition, rendered a decision, which is reported in K. Selvaraj. v. R. Jesudasan and others in (1983) II MLJ 406). Before the learned single Judge, the Headmaster would contend that a case of resignation would also come within the ambit of the set of expression "other terminated", occurring in Section 22 of the Act. In answer, the private school would maintain a contrary position. The Headmaster would further say that the finding rendered in C.M.A. No. 75 of 1977 that a case of resignation would come within the ambit of the above expression having been not agitated against and set at naught by the private school, has become final and conclusive as between the parties and would operate as res judicata and debar the private school from raking up the question once again. The Headmaster would also contend that his resignation was not voluntary. Of course, the private school would repel this contention and advance a proposition that it was voluntary. On the contention and the counter contentions, the learned single Judge posed three questions for consideration as follows :

"(1) What is the meaning of the words "otherwise terminated" occurring u/s 22(1) of the Act ?

(2) Would the finding in C.M.A. No. 75 of 1977 that an appeal lay even in a case of voluntary resignation constitute res judicata ?

(3) Did the first - respondent tender his resignation voluntarily ?"

On question No. 1, the learned single Judge opined that the set of expressions

"otherwise terminated" occurring in Section 22 of the Act, would only mean "termination brought about by the action of the management" and not by a voluntary resignation of the teacher. On question No. 2, the learned singly Judge held that finding in C.M.A. No. 75 of 1977 would not operate as res judicata on the present question, since that finding only related to the maintainability of the appeal and nothing more. On questions No. 3, the learned single Judge found no warrant to disturb the finding rendered both by the second and the third respondents that the resignation of the Headmaster was voluntary. As a result of his findings, the learned single Judge dismissed W.P. No. 10245 of 1981 filed by the Headmaster, and allowed W.P. No. 5757 of 1981 filed by the private school. W.A. No. 579 of 1982 has been preferred by the Headmaster as against W.P. No. 5757 of 1981 and he has also filed W.A. No. 580 of 1982 against W.P. No. 10245 of 1981.

2. We can first dispose of W.A. No. 580 of 1982, since the position in law with regard to the propriety of this Court examining the factual aspects on a question like this, exercising power under Article 226 of the Constitution of India, is a well settled one and there is no scope for bringing in any ambiguity with regard to the application of the rule to the instant case. There is the finding by the second-respondent that the resignation of the Headmaster was voluntary. The factual aspect has been discussed threadbare by the second-respondent. When he arrived at the conclusion against the theory of the Headmaster. This question was again gone into by the third-respondent in C.M.A. No. of 66 of 1980. The third-respondent renders a finding that neither the private school nor any one under it would have forced the Headmaster to resign from the job. The third-respondent has also gone into the factual question in detail, when he came to the conclusion that the contention of the Headmaster that he was forced to resign cannot be accepted. The learned single Judge, while deciding the third question, has also adverted to findings of the third respondent and further by himself did not find any substance in the contention raised by the Headmaster on this factual aspect. Apart from principle, we are not persuaded to take a view different from that of the learned single Judge on this question. In *P. Kasilingam Vs. P.S.G. College of Technology*, , the act of the High Court, in Writ petition, converting itself into a Court of Appeal, for re-examining the factual findings, rendered by the Tribunals below, was frowned upon in the following terms at p. 361 :

"It is clear, beyond doubt, that High Court had transgressed its jurisdiction under Article 226 of the Constitution by entering upon the merits of the controversy by embarking upon an enquiry into the facts as to whether or not the letter of resignation submitted by the appellant was voluntary. The question at issue as to whether the resignation was voluntary was a matter of inference to be drawn from other facts. The question involved was essentially one of fact. It cannot be questioned that the Government undoubtedly had the jurisdiction to draw its own conclusions upon the material before it."

In the preceding passage, there was reference to the earlier pronouncement in T.C. Basappa Vs. T. Nagappa and Another, in the following terms (p. 361) :

"The High Court has viewed the matter from a wrong perspective. In quashing the order of the Government, the High Court observes that its finding is based on no evidence but proceeds on conjectures and surmises. In doing so, it ignores the long line of decisions starting from T.C. Basappa Vs. T. Nagappa and Another, laying down that the supervision of the High Court exercised through writs of certiorari goes on two points. One is the area of jurisdiction and the qualifications and conditions of its exercise, the other is the observance of law in the course of its exercise. Such writs are obviously intended to enable the High Court to issue them in grave case where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record and such act, omission, error or excess has resulted in manifest injustice. It was rightly observed in Basappa's case that a writ of certiorari will not issue as a cloak of an appeal in disguise. It does not lie to bring up an order or decision for rehearing. It exists to correct error of law when revealed on the face of an order or decision or irregularity or absence of or excess of jurisdiction when shown."

If the above ratio is applied to the present case in W.A. No. 580 of 1982, we will not be in order to interfere with the findings of fact, rendered by the Tribunals below and further confirmed by the learned single Judge. Accordingly, we dismiss W.A. No. 580 of 1982, but we make no order as to costs.

3. The points which call for our serious attention are those raised in W.A. No. 579 of 1982 and the primary point is common to the other writ appeals, which we are dealing with separately.

4. The primary point raised on behalf of the Headmaster by his learned counsel Mr. N. R. Chandran, is that the present case of resignation is no resignation at all in the eye of law and certainly it will fall within the set of expressions "otherwise terminated", occurring in Section 22 of the Act, so as to warrant the obtaining of a prior permission, as contemplated therein. On admitted facts, it is contended that there was no resignation, as contemplated in law, and hence in the said circumstances what the private school did, when it did not entertain the services of the Headmaster, would squarely come within the set of expressions "otherwise terminated". This contention stands expatiated as follows : After the Act and the Rules thereunder got formulated and the Conditions of Service of teachers and other persons, employed in private schools, having been settled and prescribed by the said provisions, they alone must govern and even a matter of resignation must adhere to the statutory prescription set out therefore and there cannot be a method and a modality different from that prescription. Section 19 of the Act gives the power to the Government to make rules regulating the number, qualifications and conditions of service of the teachers and other persons, employed in the private schools. Rule 15(2) of the Rules, framed under the Act, lays down that the contract of service between the private school and its staff,

teaching and non-teaching, should conform to the prescribed forms. There are forms prescribed and they are form VII-A for the permanent staff and form VII-B for temporary staff. Form VII-A and in particular condition 9 alone will be relevant for the purpose of the instant case. Condition 9 in form VII-A runs as follows :

"That the said teacher shall be entitled to have his/her service terminated either by giving to the School Committee three months" notice thereof in writing or by paying the School Committee three months" pay and allowances in lieu of such notice if he is a permanent teacher. In case of a teacher who is not permanent, the period of notice shall be 2 months and the amount payable in lieu thereof shall be two months" pay and allowances."

The letters of resignation dated 9th April 1976 do not conform to the statutory prescription, as per condition 9. Any agreement entered into setting out any other mode of resignation and which does not conform to condition 9, cannot survive in view of the overriding effect set forth in Section 28 of the Act. In any event, in the instant case, even the prior agreement dated 25th July 1973, entered between the private school and the respondent, a copy of which agreement has been produced before us, has adopted only the same method, as set out in condition 9.

5. Advancing the above contention, Mr. N. R. Chandran, learned counsel appearing for the Headmaster, places reliance on certain pronouncements. In *P. Kasilingam v. P.S.G. College of Technology* (supra), while dealing with an analogous statute, namely, Tamil Nadu Private Colleges (Regulation) Act 19 of 1976, the Supreme Court took note of the purpose and object of the said statute in the following terms 1981 II LLJ 358 :

"The Tamil Nadu Private Colleges (Regulation) Act, 1976 is enacted, inter alia, for the regulation of the conditions of service of teachers employed in private colleges. The avowed purpose and object of the Act is to confer protection to the teachers of private educational institutions against arbitrary action of or victimisation by the management of such educational institutions."

In *T. Chandrasekaran Vs. The Committee of Management of Pachaiyappa's Trust and Others*, , which was dealt with by both of us, we have expressed the view that apart from the sections, the prescriptions made in the Rules and the Forms thereunder, pursuant to the powers under the Act with regard to conditions of service must alone hold the field and the general concept of master and servant jurisprudence cannot be brought in. While expressing this view, we took note of the opinion of the earlier Bench of this Court in *Dr. Madan Mohan Rao v. The State of Tamil Nadu rep. by the Secretary to the Government. Education Department, Madras* and another (1983) II MLJ 491. We also stressed the impact of Section 28 of the Act, with reference to the overriding effect of the provisions of the Act on any agreement or contract of service made before or after the date of the commencement of this Act. We do not propose to repeat the same

discussion of the relevant aspects in this pronouncement of ours, and we adopt the reasonings and observations set out in our earlier pronouncement. In *Stella Jayaraj v. The Private College Appellate Tribunal, Madras and others* (1987) II MLJ 194, one of us had to frown upon a letter of resignation, which did not conform to condition 9, as ineffective in law. The first point raised in that case ran as follows :

"The petitioner could not be stated to have tendered a resignation in the eye of law since the rules framed under the Act and the requisite Form 7-A and in particular Condition 9 thereof contemplate a specified mode of a staff of the College going out of the service and in the present case, the statutory formalities have not been adhered to."

Dealing with that point, the view expressed is found in paragraph 4 of the pronouncement as follows :

"Since I am obliged to accept the first point taken by the learned counsel for the petitioner which point has got a sound basis on the well accepted principles of Courts including the highest in the land, I find no need to go into the other points raised by the learned counsel for the petitioner. If there is any law or statutory rule or agreement governing the conditions of the service which lay down the modality or method, adopting which an employee has to go out of service voluntarily, that alone has to be adhered to and in such a case, the general law governing the resignation cannot be invoked. The law or the statutory rule or the agreement alone must hold the field and must be strictly complied with. In the absence of such a law or statutory rule or agreement, the service of an employee will stand terminated from the date on which his request for resignation is accepted by the employer. But whenever there is a law or statutory rule or agreement which governs the situation, there should be compliance with the same. This point was taken before the first respondent and there had been advertence to Condition No. 9 of Form 7-A prescribed under the rules and yet the legal consequences and implications thereof have not been appreciated by the first-respondent and he has opined that inspite of the rule, there can be a resignation orally. Condition No. 9 of Form 7-A prescribed by the rules reads as follows :

"That the said teacher shall be entitled to have his/her services terminated either by giving to the college committee three months" notice thereof in writing or by paying the college committee three months" pay and allowances in lieu of such notice if he/she is a permanent teacher. In the case of a teacher who is not permanent, the period of notice shall be two months and the amount payable in lieu thereof shall be two months" pay and allowances." Admittedly in the instant case, the resignation put against the petitioner was not at all in conformity with the above condition. Hence, it is not possible to count and act upon the alleged oral resignation. This aspect is sufficient for the petitioner to succeed."

6. In *Vidya Dhar Pande Vs. Vidyut Grih Siksha Samiti and Others*, a case of

dismissal of a headmaster in violation of the regulations framed u/s 28(2)(d) of the M.P. Madhyamik Siksha Adhiniyam came up for consideration before the Supreme Court. Regulations 71 and 79 were relevant and they ran as follows :

"71. All Principals, Head Masters, Lecturers, and Teachers, except those appointed temporarily for a period of less than one year, shall be on probation for a term of one year which may be extended to two years. If after two years service any incumbent is continued in his appointment, he shall, unless the appointing authority, for reasons to be recorded in writing, otherwise directs, be deemed to have been confirmed in that appointment. On being confirmed the incumbent shall sign a contract of service in the form one or two (appended to these Regulations), as the case may be, as soon as practicable.

"79(1) : The Managing Committee shall not terminate the services and reduce the pay of Principal or Headmaster appointed on written contract without first obtaining Director's sanction for holding a full enquiry into the charges against him. The incumbent shall be given in writing a statement of the charges against him, and also be afforded an opportunity of defending himself. His previous service and character with reference to his confidential file and service book shall also be taken into consideration before arriving at a decision.

(2) No decision as to termination of service or reduction of a Principal or a Headmaster shall be valid, unless passed at Special Meeting by a majority of two-thirds of members of the Managing Committee. No such resolution shall be valid, if passed at an adjourned meeting.

(3) The Principal or Headmaster will have a right of appeal to the Director against decision of the Managing Committee. The decision of the Director shall be final."

The termination was found not in accordance with the said regulations as per the following observations (1989-I-LLJ-81 at 84) :

"In this case the appellant had been appointed on probation as Principal with effect from July 3, 1968 and as he was allowed to continue for more than two years he shall be deemed to have been confirmed in the post of Principal of the said school. The Managing Committee of the School by its letter dated June 23, 1971 terminated the services of the appellant after giving him one month's salary in lieu of notice, without serving on him any charges against him, without holding any enquiry and also without giving him any opportunity of hearing before making the order terminating his service as required under the provisions of Regulation 79(1) of the said Regulations. The impugned resolution was also not passed at a special meeting by a majority of two-third of the members of the Managing Committee as provided in clause (2) of the said Regulation 79."

The High Court, though it found that there was a violation of the provisions of the Regulations 71 and 79, yet as these regulations have got no statutory force, it held that the headmaster could not get the relief of a declaration that the order of termination of his services was illegal and invalid and also he could not get an

order for his reinstatement in service as his appointment was in the realm of a contract of master and servant and his only remedy was an action for wrongful termination from service. After referring to and relying on its earlier pronouncements, the Supreme Court reversed the order of the High Court and held that the regulations have statutory force and the termination of the headmaster was in breach of regulation 79 and hence it was illegal. In *Manmohan Singh Jaitla Vs. Commissioner, Union Territory of Chandigarh and Others*, , the Supreme Court stated (p. 517.) :

"Any agreement not in consonance with the statutory provisions beneficial to a class in need of protection cannot be given effect to if it stand in derogation of the mandatory provisions of the statute."

When the statute says that a particular act has to conform to a particular prescription, method other than the one prescribed if adopted will have no sanction in law. Any other view to be taken will be only tending to render the statutory prescriptions nugatory and meaningless. Courts should not tend to that result. This is sufficient for the headmaster to have the letters of resignation ignored. The fact that he was the author of the letters of resignation and he did resign voluntarily will not alter the legal position. At the relevant point of time, condition 9 alone, on the aspect of resignation, remained in the Statute Book. Though it apparently looks as if it is intended to benefit only the private school, when it speaks about the teacher giving notice for prescribed periods or making payments in lieu of such notice, it is not apparently and inherently so. This condition has got to be viewed as the only meagre safeguard for the teacher against the capricious and arbitrary conduct on the part of the private school, in cutting off the services of the teacher and throwing him out of employment overnight, unceremoniously, by obtaining letters of resignation adopting unorthodox and unconscionable means. If the teacher could go out of service of his own volition only as per condition 9, that must be viewed at least as a slender safeguard against resignation taking place by force or coercion or undue influence. It is not normally expected of a teacher to shell out money out of his pocket, if he has no definite intention of his own to go out of employment forthwith for better prospects or on account of other conveniences of his own. Condition 9 alone was envisaged and adumbrated in the statute book earlier. We have to view it as beneficial both to the teacher and the private school. Otherwise, we will be doing violence to the very intendment behind the provision. Better and clear cut provisions got incorporated into the rules later on 2nd April 1981, by the introduction of Rule 17-A, which has specifically dealt with educational agencies obtaining compulsory resignation letters either at the time of appointment or subsequently from the employee. We are not prepared to belittle from any angle the prescription found in condition 9 on the question of the teacher going out of employment of his own volition. The private school cannot and in fact is not pleading ignorance of law. If the teacher had not conformed to the statutory prescription, the private school ought to have ignored the letters of resignation and insisted for satisfying the statutory prescription. If

it had not done so, it had to, and in fact it has, run the risk and must face the wrath, consequent upon breach of law.

7. If the letters of resignation, dated 9th April 1976, stand ignored, as not conforming to statutory prescriptions, then we are left with the act of the private school no longer entertaining the service of the headmaster or excluding him from service. The private school can no longer fall back upon the letters of resignation as the basis for the Headmaster going out of service. Hence, the aspect of the Headmaster resigning, be it so voluntarily, cannot be brought to the forefront and no argument can be built that since it is a case of voluntary resignation it will not fall within the set of expressions of "otherwise terminated", occurring in Section 22 of the Act, so as to warrant the obtaining of the prior approval. The resignation being no resignation in the eye of law, the non-entertaining or discontinuing the services of the headmaster will certainly fall within the ambit of the above set of expressions. If so, violation being patent with reference to non-obtaining of the approval as per Section 22 of the Act, the termination has got to be set aside.

8. Mr. M. R. Narayanaswamy, learned counsel appearing for the private school, would advance a proposition that, assuming the matter could be brought within the ambit of the set of expressions "otherwise terminated", occurring in Section 22 of the Act, on the ground that there was no proper resignation in the eye of law, and on that account prior approval, as contemplated therein, being required was not obtained yet, the Forums under the Act, as well as this Court having found that the Headmaster resigned voluntarily, that position on merits must be maintained and it will not be proper to countenance the technical plea of the Headmaster built on the aspect of want of approval. Learned counsel for the private school wants us to draw inspiration from the Industrial Law and in particular from the provisions of Sections 33 and 33-A of the Industrial Disputes Act, 1947. The said provisions contemplate that the employer shall not alter the conditions of service of a workman on specified contingencies without the express permission of the specified authority, and if there is a contravention, the employee could complain and the complaint could be enquired into and the entire controversy could be adjudicated as if it were an industrial dispute. Learned counsel for the private school would also submit that as u/s 10 of the Industrial Disputes Act, 1947, the scope of enquiry by the Forums under the Act, and consequently by this Court, must be construed as wide enough to investigate the merits of the case and pass appropriate orders depending on the same, instead of maintaining only a technical plea. The scope of industrial adjudication is entirely different as found in the said provisions and as expatiated by pronouncements. It is not possible to draw any parity between the scope of the provisions of the Act and the scope of the concerned provisions of the Industrial Disputes Act, 1947. It has always been recognised that no guidance need be taken with regard to conferment of powers, incurring of obligations and consequences of breach of prescriptions from the Statutes, other than the relevant one dealt with by the Court. Significantly in the Act there is no provision

empowering any of the Forums under it to ameliorate the mischief of the breach of Section 22 of the Act, by finding a justification on merits, for the dismissal. Nor could this Court assume such a jurisdiction to set at naught the mandate of law. We do not propose to act in derogation of well accepted principles. In fact, in *Mani Higher Secondary School, Coimbatore Vs. The Joint Director (Secondary) School Education, Madras and Others*, , *Sathiadev, J.*, while dealing with a case of termination of service on medical grounds under the Act, held that it will come within the purview of Section 22 of the Act and lack of prior approval will vitiate the termination. Of course, the learned Judge relied on the following decisions arising under statutes regulating education :

- (i) *Miss Ratna Bablani v. Director of Education (1978) SLJ 44 (Delhi) :*
- (ii) *Bhagabati Middle English School v. Baikunthanath Mohapatra and others (1977) (2) SLR 37 and*
- (iii) *Chhabinath Rasi v. Principal, Adarsh Higher Secondary School, Chozipur and others (1977) (2) SLR 184.*

The Acts says that a dismissal, removal, reduction in rank or otherwise terminating a staff of a private school should be done only with the prior approval of the competent authority. Then it should be done only in that manner and it impliedly prohibits the doing of the same in any other manner. Hence, when the private school does not comply with the statutory prescription and fulfill the conditions precedent to its action in dispensing with the services of the staff, its action will have to be held as ab initio void.

9. Mr M. R. Narayanaswamy, learned counsel appearing for the private school, not only in this matter, but also for the private schools in the other matters, would submit that this contention never found expression at any point of time earlier before the forums below, who adjudicated the controversy and it will not be in order for this Court to permit the Headmaster to raise this plea for the first time before this Court. Facts not disputed having emerged in favour of the Headmaster, the application of the law need not be stultified on the technical plea that this was not advanced specifically before the forums, who adjudicated the controversy earlier. In fact, the other side would say that this point was raised on one way or the other in some of the cases before the forums below. The whole controversy revolved and revolves on the question as to the necessity to obtain an approval, as per Section 22 of the Act. The propriety or otherwise of the resignation in the eye of law was the matter in issue from the inception of the controversy. A ground purely one of the law on the admitted facts of the case can be allowed to be raised for the first time before this Court in appropriate cases, though the normal rule is that this Court, while exercising its highly prerogative writ jurisdiction, should not allow a party to raise a new ground, not raised earlier before the forums below. The objection, in our view, is one going to the very root of the matter and vitiates the action of the private school. We cannot shut our eyes to the legal lacuna and reject the case of the Headmaster

inspite of it. This Court should not disengage itself from consideration of a legal point emerging on admitted facts and decline to exercise its jurisdiction, if the facts of the case do warrant the same. In Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others, , the traditional limitations woven around the highly prerogative jurisdiction sought to be put forth before the Supreme Court, were disregarded by it and it was opined that "our Constitution framer have felt the need for a pervasive reserve power in the higher judiciary to right wrongs under our conditions."

10. Another contention raised by Mr. M. R. Narayanaswamy, learned counsel appearing for the private school, is that the Act and the Rules framed thereunder, do not contemplate that even without entering into an agreement, as per the forms, the conditions set out therein shall govern the relationship between the private school and its staff. This contention omits to take note of the implications of the provisions of the Act and in particular the effect of Section 28. We have no ambiguity in our mind with reference to scope of Section 28 of the Act, which contemplates that what has been provided and laid down in the Act and the Rules for all or any of the matters specified with regard to the conditions of service alone must hold the field and the avoidance to enter into an agreement as per the mandate of the statutory provisions cannot be taken advantage of to set at naught the operation of the statutory prescriptions. By the very force of the prescriptions, they stand applied to every case governed by the Act. Section 19 empowers the Government to make Rules in this behalf. The Rules have been made. The Rules take in the forms. The non-compliance with the formality of entering into an agreement as per the statutory forms, be it so wilful or due to inadvertence, cannot be pressed forth to avoid the statutory prescriptions. We have appreciated and stressed the overriding effect expressed in Section 22 of the Act in T. Chandrasekaran v. The Committee of Management of Pachaiyappa's Trust, Madras and others (supra).

11. Learned counsel for the private school would also contend that the scope of condition 9 in form VII-A permits the private school to waive the same and it is open to it to relieve the teacher from the rigour of the contract without insisting upon the satisfaction of the prescription set out therein. In this behalf, learned counsel for the private school places reliance on a pronouncement of a Bench of this Court in Grama Committee High School, Venkateswarapuram Vs. Arunachalam and Others, . We have carefully gone through the said pronouncement and we do not find that the point which has been specifically argued before us was specifically advanced before and considered by the earlier Bench. The scope of the contentions raised before the earlier Bench can be gathered from paragraphs 10 and 11 of the report, which run as follows (pp. 123-124) :

"10. Mr. K. Ramamurthi, learned counsel appearing for the petitioner, raised the following contentions :-

(1) The resignation of the petitioner has not been accepted by the School

Committee which is the only authority capable of accepting the resignation. In this case, the resignation having been accepted by the Executive Committee, i.e., the Educational agency only, the acceptance is not valid in law.

(2) Under R. 17A of the Tamil Nadu Private School (Regulation) Rules, there should be prior approval by the Chief Educational Officer before any resignation of a teacher could be accepted by the school authorities. In the absence of any such approval, acceptance of the resignation is not lawful.

(3) A resignation can be withdrawn before it is accepted by the appropriate authority. In this case, the resignation was withdrawn before the approval of the Chief Educational Officer could be granted. Consequently, the withdrawal of the resignation was a valid one. Hence, the resignation of the petitioner was ineffective.

11. Mr. Govind Swaminathan, learned counsel for the respondent, contended that under the existing rules, there is no necessity for acceptance of a resignation in order to be effective. According to him, the resignation of the petitioner took effect co instant in view of the unambiguous language used by the petitioner. He contended further that the proper authority to accept the resignation was the Educational Agency and in the present case, it is only Educational Agency which accepted the resignation. Learned counsel submitted that the only function of the Chief Educational Officer is to find out whether the resignation was voluntarily given or not. According to him, if it is found by the Chief Educational Officer that the resignation is valid one, he has no option but to give his approval to relieve the teacher. As regards the letter of withdrawal dated 4th February 1983, learned counsel submitted that there could be no question of withdrawal in view of his first submission and in any event, it is ineffective as it was long after the acceptance of the resignation and as it was never sent to the educational agency."

We are not able to say that this decision could be of any assistance to the private school to have the effect of non-compliance with condition 9 nullified.

12. As we have already noted, the Headmaster has to succeed on over above opinion that the lack of obtaining approval on the part of the private school, before it discontinued the services of the Headmaster, vitiated its action. Yet we must record that profuse were the submissions addressed and profuse were the citations made both by the learned counsel for the Headmaster and the learned counsel for the private school on the question that a case of voluntary resignation would not fall within Section 22 of the Act. The learned single Judge was, of course, obliged to deal with the arguments placed before him on this question and expressed his view that a case of voluntary resignation would not fall within the set of expressions "otherwise terminated" and it would only mean termination brought about by the action of the management. It is only in this view, the learned single Judge held that there was no scope for requiring the prior approval, as contemplated u/s 22 of the Act. On admitted facts, the question having been viewed from the legal angle, as per our discussion supra,

this point has practically lost its significance and it does not call for any discussion. Hence, the reasonings of the learned single Judge on this point stand vacated.

13. The Headmaster was also anxious to stultify the case of the private school even at the threshold by raising a plea of *res judicata* based on the earlier decision of the third-respondent in C.M.A. No. 75 of 1977 on the question as to whether a case of resignation of a teacher would come within the set of expressions "otherwise terminated", occurring in Sections 22 and 23 of the Act. The learned single Judge declined to accept this plea of the Headmaster. Submissions were made before us on this aspect also. For the very same reasons, expressed by us in the preceding paragraph, we find that it is unnecessary to go into this question. Hence, the reasoning of the learned single Judge on this point also stand vacated.

14. As a result, we allow W.A. No. 579 of 1982. The consequence is W.P. No. 5757 of 1981 will stand dismissed and the order of the third-respondent, impugned in the writ petition, will stand restored. We make no order as to costs.