

(1991) 01 MP CK 0016
In the Madhya Pradesh High Court
Case No : F.A. No. 17 of 1990

Ramcharanlal Sharma and Another	Vs	APPELLANT
Smt. Vinod Shrivastava and Another		RESPONDENT

Date of Decision : 23-01-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Limitation Act, 1963 — Article 55, 58
Madhya Pradesh Ashashkiya Shikashan Sanstha (Adhyapakon Tatha Anya
Karmachariyon Ke Vetano Ka Sanday) Adhiniyam, 1978 — Section 6, 7

Citation : (1992) 37 MPLJ 526 : (1992) MPLJ 526

Hon'ble Judges : T.N. Singh, J

Bench : Single Bench

Advocate : R.D. Jain, for the Appellant; A.M. Naik, for the Respondent

Final Decision : Allowed

Judgement

T.N. Singh, J.

This appeal has been heard in instalments. Hearing concluded on 8-1-1991, but on the earlier dated, 13-12-1990, while making submission on merits and assailing seriously the validity of the impugned judgment and decree on grounds of "limitation" and "maintainability", an offer was made on behalf of appellant to the plaintiff/respondent to settle the matter amicably. To enable her, who was present in Court, to consider the offer, further hearing was adjourned.

In discharge of my constitutional duty, I warned counsel and parties present in Court that for settling personal scores for hurt ego to anybody, this Court cannot be a forum. Therefore, without anticipating decision on merits, they should endeavour honestly and sincerely to reach an amicable settlement without Court's intervention inasmuch as concepts of compassion and sympathy in deciding a legal dispute are unknown to Courts. Justice has to be administered according to law in Courts as the Judges swear to uphold the law and Constitution without fear, favour or ill-will and they must decide dispute

accordingly even if bitter truth and stringent law yields bitter result for any party, unfortunately, it appears my warning went unheeded and I was required to conclude hearing on merits of the appeal on 8-1-1991 after Shri Naik, appearing for plaintiff/respondent addressed me, submitted that his client was not interested in amicable settlement.

In the plaint dated 20-4-1984, defendants arrayed are (1) Ramcharanlal Sharma, Secretary, Adarsh Vidyalaya Sanchalan Samiti, Morena, (2) Patiram Shiromani, Head Master, Adarsh Primary School, Ganeshpura, Morena and (3) Laxminarayan Sharma, Principal, Adarsh Higher Secondary School, Ganeshpura, Morena. The plaintiff described herself as a teacher in the Adarsh Primary School, Morena and stated that she had been serving as a Teacher under aforesaid Managing Committee of Adarsha Primary School, Ganeshpura, as a permanent employee. The provisions of Madhya Pradesh Ashaskiya Shikshan Sanstha (Adhyapakon Tatha Anya Karmachariyon ke Vetan ka Sanday) Adhiniyam, 1978, for short, the "Adhiniyam" were applicable to her and to employees of the said Managing Committee. She also stated that all the three educational institutions were, in fact, managed by defendant No. 3 on behalf of the Managing Committee and he had dealt with the matter in all respects concerning plaintiff's case. Her case is that since 1978, plaintiff started receiving salary under orders of District Education Officer, Morena when defendant No. 3 demanded plaintiff to refund excess payment made of Rs. 60/- per month from her. On her refusal, defendant No. 3 threatened her with dismissal from service and engaged goondas to intimidate her. He started misusing his influence with the Managing Committee for termination of plaintiff's services. As a result, the Managing Committee, illegally and acting mala fide, suspended her in respect of an incident of 22-9-1978 without drawing up any proceedings, by order No. 591, dated 3-10-1978. Thereafter, acting in a highhanded manner, the Committee conducted disciplinary proceedings behind her back and adopted a Resolution on 12-3-1979 to terminate her services w.e.f. from 23-3-1979.

To few other averments in the plaint, reference is necessary. Plaintiff stated that in regard to incident aforesaid of 22-9-1978, verdict of acquittal in her favour was rendered in Criminal Case No. 260 of 1980 and on the other hand, by an order passed on the same date namely 22-9-1983, in Criminal Case No. 114 of 1980, the same Court convicted defendant No. 3, Laxminarayan Sharma and two others holding that they had assaulted the plaintiff. Thus, as the criminal act of 22-9-1978, attributed to her, being not established judicially, her dismissal was mala fide and illegal. Under the Adhiniyam the Managing Committee had no power to dismiss her from services without approval of District Education Officer, for short, the DEO, while by his order dated 29-8-1979, the said Officer directed the Managing Committee to reinstate her in service within seven days, which was not complied with. Her Joining Report dated 31-8-1979 was not accepted. Indeed, order dated 2-9-1979 of the Managing Committee's President Shri Garg was also flouted by the defendants. She also stated, however, that the Managing Committee moved a Writ Petition in this Court (M. P. No. 160/82) which was

dismissed and thereafter on 74-1983, the DEO, Morena, again passed order for plaintiff to be reinstated in service. Plaintiff went on hunger strike due to which defendant No. 3 gave an undertaking to DEO, agreeing to clear her dues and to allow her to discharge duties from 30-4-1982.

As per Schedule No. I of the plaint, she claimed arrear salary from October, 1978 upto March, 1984, totalling Rs. 34,211.60. According to her, cause of action for the suit arose on 30-4-1982 in terms of the undertaking aforesaid. She prayed leave to sue as an indigent person and claimed following reliefs :

- (a) decree against defendants for payment to her of Rs. 34,211.60;
- (b) declaration that the order dated 22-3-1979 of her dismissal from service passed by the defendant/institution was illegal;
- (c) defendants to be restrained from interfering with due discharges of duties by the plaintiff in their Institution; and
- (d) any other relief to which she may be found entitled along with costs and compensation.

In their joint written statement, besides the usual denials, the defendants raised a Special Plea disputing entitlement, in specific terms, of the plaintiff, to institute the suit and submitting also that the suit was barred by limitation. Plaintiff's claim in regard to "undertaking" (in para 11 of the plaint) they disputed. They averred that the plaintiff resorted to hunger strike to exercise undue influence on the Managing Committee, but the Committee did not give the alleged undertaking on 30-4-1982. In case defendant No. 3 had wrongly and in unauthorised manner, acted under undue influence and had given to the Collector or to any Government official any undertaking, that was void and not enforceable. That "undertaking" had no effect on the Resolution passed by the Committee on 12-3-1979, terminating services of the plaintiff. Since 3-10-1978, the plaintiff had rendered no service and discharged no duties in the Adarsh Primary School at Ganeshpura and she was not present in the School on any day thereafter. With reference to the writ petition, they stated that no decision was rendered on merits therein and that had no effect on rights and obligations of the parties. The letter of the DEO, pursuant to the decision in the Writ Petition had, therefore, no legal force and no benefit by that letter was conferred legally on the plaintiff.

On merits, defendants' case in their written statement is that the Managing Committee was receiving continuously complaints against the plaintiff in respect of her shameful and arbitrary acts within the school precincts. A prima facie case on enquiry being established, by Resolution passed on 1-10-1978, she was suspended on and from 3-10-1978 and an Enquiry Committee with three members was appointed. That followed regular charge-sheet and enquiry by the Committee in her presence. After hearing her, the Committee submitted the enquiry report in which they found the charges levelled duly proved due to which

in its meeting held on 12-3-1978, the Managing Committee upon holding the plaintiff guilty passed Resolution to terminate her services. Neither the proceedings nor the enquiry was tainted in any manner by any malice of any officer of the Institution. As regard the two criminal cases, they stated that plaintiff had given a beating to Smt. Bhagwati Devi and with the object of escaping consequences of her criminal act, she had lodged a false private complaint. Although in her case, the trial Court had convicted defendant No. 3 and fined him that verdict was challenged in appeal that was pending decision. In regard to plaintiff's acquittal, the verdict was also challenged, in this Court and the appeal was admitted for hearing. They denied that the statutory approval in regard to her dismissal was not obtained and stated that on 22-3-1979, the Divisional Superintendent of Education, Gwalior, for short, the DSE, as also the DEO, were duly informed of plaintiffs dismissal.

They admitted receipt of letter dated 29-8-1979 from the DEO in respect of Managing Committee's Resolution, but averred that on 4-9-1979, that was replied and he was informed that on 3-9-1979, a Resolution was passed in presence of Shri K. K. Sharma, A.D.I.S., his representative, to the effect that his direction in the said letter was invalid in law and that need not be complied with as that had no legal force. To that communication of the Managing Committee, the DEO did not respond and as such, there was no question of the plaintiff being taken back in service. They denied that plaintiff ever submitted any Joining Report or having appeared in the Institution for that purpose and averred that since suspension on 3-10-1978 and subsequently dismissal on 12-3-1975, she never came back to serve in the Institution. Her services being validly terminated by the Managing Committee's Resolution dated 12-3-1979, she was entitled neither to reinstatement nor to arrear salary or any compensation.

On pleadings aforesaid, as many as eight issues were framed by the trial Court including issue No. 5 relating to "limitation" and issue No. 7 relating to "maintainability" namely Court's jurisdictional incompetence to entertain and try the suit. Those two issues were decided against the defendants. On merits the claim of the plaintiff was found duly established on the footing that her dismissal was illegal. Issue No. 1 framed in this connection was, whether plaintiff's services were illegally and arbitrarily terminated w.e.f. 22-3-1979 by Resolution dated 12-3-1979 and the enquiry held was a mere drama? It was found that the enquiry was tainted with irregularities and that the required approval of DEO was obtained. Accordingly, the impugned decree was passed in plaintiffs favour declaring that termination of her sendees was illegal and void and that she was entitled to be reinstated pursuant to order passed, Annexures P-9 and P-12, by DEO. She was also held entitled to recover from the defendants Rs. 34,211.60 which they were required to pay her within three months.

As earlier alluded, counsel addressed me mainly on two issues of "limitation" and "maintainability" rightly indeed, and I propose, therefore, to confine in this judgment consideration of those issues to decide the appeal finally. For that, I

have found reference, necessary only to the following documentary evidence adduced by parties :

(1) Ex.P-1, dated 22-3-1979, addressed to plaintiff by the Secretary, Managing Committee, Adarsha Vidyalaya Sanchalan Samiti. She was informed that the Committee had resolved on 12-3-1979 to terminate her services having found her guilty of misconduct as per report of the Enquiry Committee for indiscipline and disturbing peaceful atmosphere in the school by beating an Assistant Teacher. Copies of the letter were endorsed to : (1) District Education Officer, Morena, (2) Principle-Cum-Education Officer, B.T.I, Morena and (3) Divisional Superintendent of Education, Gwalior.

(2) Exs. P-2 and P-3, copies of judgment of Criminal Cases Nos. 216/80 and 114/80, above referred.

(3) Ex. PA, copy of letter dated 31-8-1979, written by plaintiff to the Head Master, Adarsha Primary School, Morena with an endorsement of the President addressed to defendant No. 3 (Principal) that DEO's order regarding reinstatement of the applicant be perused and complied with.

(4) Ex. P-5, copy of Collector's letter dated 30-4-1982, addressed to the President , of Teachers' Association, Morena, informing him that on that day in writing the Samiti had agreed to allow Smt. Vinod Shrivastava (Plaintiff), Assistant Teacher, Adarsha Primary School to attend the School and also to take steps in accordance with rules for payment of her salary.

(5) Ex. P-2, copy of the writ petition filed by Adarsha Vidyalaya Sanchalan Samiti, Registration No. 314 of 1956, through its Secretary, Ramcharanlal (defendant No. 1), which was registered as Misc. Petition No. 160 of 1982.

(6) Ex. P-8, copy of this Court's order dated 9-2-1983 passed in M.P. No. 160 of 1982 "The" petition is dismissed for default of appearance".

(7) Ex. P-9, copy of letter dated 7-4-1983, written by DEO, Morena, to Secretary, Adarsha Shiksha Sanchalan Samiti, Morena.

(8) Ex- P-12, copy of letter dated 29-8-1979 by DEO, Morena, to Secretary, Adarsha Primary School, Morena.

(9) Ex. P-13, copy of letter dated 30-4-1982 (above referred "undertaking") addressed to Collector, Morena, by Laxminarain Sharma (defendant No. 3).

(10) Exs. D-1 and D-2, Enquiry Committee's proceedings dated 3-1-1979 and 15-1-1979.

(11) Ex. D-3, reply dated 4-1-1979 by plaintiff to show cause notice addressed to Officer-in-Charge, Adarsha Higher Secondary School, Morena.

(12) Ex. D-4, Inland Letter dated 31-8-1979, superscribed "U.P.C.", written by plaintiff to Shri Patiram, Head Masster (Defendant No, 2).

(13) Ex. D-5, certified copy of the "Constitution" of Adarsha Vidyalaya Sanchalan Samiti, Morena, issued under the seal and signature of Assistant Registrar, for Registrar of Firms and Societies.

(14) Ex. D-6, Letter addressed to DEO, Morena, by President, Managing Committee, with copies endorsed to : (1) Secretary, Education Department, Government of Madhya Pradesh, Bhopal; (ii) Director, Public Instructions, M.P., Bhopal and (iii) Divisional Superintendent of Education, Gwalior.

(15) Ex. D-7, Enquiry report; Ex. D-8, deposition of Patiram in the enquiry.

In deciding issue No. 5, pertaining to "limitation", Article 58 of the Limitation Act was applied rightly by the trial Court and in this appeal his view that cause of action arose not on 22-3-1979, but on 7-4-1983, is seriously assailed. According to the trial Court, defendants were duty-bound to obey DEO's order dated 7-4-1983 (Ex.P-9) because that was based on this Court's decision in the Writ Petition, aforesaid. Learned District Judge also took the view that the defendants were bound by the "undertaking" dated 30-4-1982 (Ex. P-13). He held that the decision of this Court, cited by defendants, reported in 1980 JLI SN 39 , Jairam and Ors. v. State of M.P. was not applicable on facts. Similarly, in deciding issue No. 7 reliance of defendants on Performing Right Society Ltd. and Another Vs. Commissioner of Income Tax and Others, was held inappropriate and other two decisions too, cited before him, he distinguished. To Wit 1978 (1) MPWN 6 and AIR 1976 SC 888 . He took the view that all those decisions were not concerned with the interpretation of the Adhinyam or cause of action based thereon. He relied on Sitaram Kashiram Konda Vs. Pigment Cakes and Chemicals Mfg. Co., Sitaram Kashiram Konda's case in holding that the suit was maintainable because Section 9, CPC allows disputes in regards to dismissal of an employee to be adjudicated by Civil Court. He held that cent per cent contribution towards payment to salary of teachers being made by the State Government (as per the Adhinyam), any illegal action in regard to withholding salary could be challenged in a Civil Court.

Both issues are to be determined in the context of the statutory zodiac which the Adhinyam constitutes along with Rules framed thereunder. To draw a brief outline of the statutory constellation, notice may be first taken of Section 2 of the Adhinyam comprising of the definition clauses in respect of its few salutary features. As per clause (a) 1-8-1978 is notified in M. P. Gazette dated 31-7-1978 as the date on which the Adhinyam comes into force. Pursuant to clause (b) "Competent Authority" is similarly notified, on 20-8-1978, in a tabular form in respect of Primary and Middle Schools, District Education Officer; for "Higher Secondary School including Primary School and Middle School under its Management", the Divisional Superintendent of Education; and for any College, M. P. Uchcha Shiksha Anudan Ayog. The term "Teacher" is defined to mean "a teacher of an institution in respect of whose employment maintenance grant is paid by State Government or the Ayog" and who is "employed with the prior approval of the authorities specified by the State Government in this

behalf.....but does not include a teacher whose appointment is disapproved under clause (c) of Section 6". Clause (j) defines the term "salary" to mean "the pay and dearness allowance for the time being payable to a teacher or an employee at the rate approved for the purpose of payment of maintenance grant." "Section 10 of the Adhiniyam empowers State Government to make rules for carrying out the purposes of the Act and enumerates specifically also certain matters", referring explicitly to the provisions of Section 5 and sub-clauses (i), (ii), (iii) and (iv) of Section 6(a) and Section 6(7).

Following sets of Rules are framed by the State Government in exercise of the powers conferred on it u/s 10 : -

"(1) The Madhya Pradesh Ashaskiya Shikshan Sanstha (Adhyapakon Tatha Anya Karmachariyon Ke Nilamban) Niyam, 1978, hereinafter, referred to as "Suspension Rules."

(2) The Madhya Pradesh Ashaskiya Shikshan Sanstha (Adhyapak Tatha Anya Karmachari) Appeal Rules, 1978 hereinafter, referred to as "Appeal Rules."

(3) The Madhya Pradesh Ashaskiya Shikshan Sanstha (Adhyapakon Tatha Anya Karmchariyon Ki Bharti) Niyam, 1979, hereinafter referred as "Recruitment Rules."

(4) The Madhya Pradesh Ashaskiya Shikshan Sanstha (Adhyapakon Tatha Anya Karamchariyon Ko Padachyut Karne Sewa Se Hatane Sambandhi Prakriya) Niyam 1983, hereinafter referred to as "D. E. Rules."

(5) The Madhya Pradesh Ashaskiya Shikshan Sanstha (Institutional Fund) Rules, 1983, hereinafter, referred to as the Salary Rules."

Reference is also necessary to Notification dated 31-8-1978, issued pursuant to Section 6(a)(iii) of the Adhiniyam specifying "appellate authorities" and their respective jurisdictions in a tabular form :

(1) In respect of Primary School and Middle School : Divisional Superintendent of Education;

(2) For "Higher Secondary School including Primary School and Middle School under its Managements" Director of Public Instructions, Madhya Pradesh; and

(3) for colleges: State Government.

Provisions of the Adhiniyam deserve to be examined more closely because I have found myself unable to accept the contention of Shri Naik that the Adhiniyam is not a special law and that it does not affect the general law, of contract in respect of employment of any teacher by Managing Committee of the institution in which he serves. I am not at all impressed by counsel's argument that the long title of the Act fully reflects the scope and ambit of the provisions of the Adhiniyam and, in my view, the expression "and other matters ancillary thereto" of the long title is pregnant with ramifications which are to be culled out from the

provisions directly. The long title indicates merely one of the purposes of the Adhiniyam when it states "to make provisions for regulating payment of salaries to teachers and other employees of Non-Government Schools receiving grant-in-aid from the State Government....". Even a brief survey of the provisions reveals that the Adhiniyam deals with matters far beyond that of payment of salary; it deals explicitly with the entire gamut of employment by embracing within its own ambit and that of its Rules. Power of "control" exercisable variously by the State Government on the functioning or "management" of non-Government Schools and Colleges. Along with the term "teachers", however, are also define terms "Employee", "Institution", "Maintenance Grant", "Management" and "School" to advance that purpose. Law is well-settled that aid of the long titles is invoked to clear an ambiguity and that in divining the object and purpose of any particular statutory provisions its function is not crucial but marginally; it is not conclusive of the scope, ambit or even purpose or object of the concerned statute.

Section 3 specifies the date of payment of salary to a teacher or other employee and prohibits payment to one in respect of whom "an order approving the appointment is not passed as contemplated in Section 6(c)". It also prohibits unauthorised deductions. Section 4 empowers the "Education Officer" to inspect records and books of accounts etc. of any institution and to give any "direction" to the "Management" in regard to any financial impropriety observed. Section 5 constitutes "Institutional Fund" for each educational institution and contemplates payment therefrom of salary of teachers and employees of the institution. The contribution of the State Government is to be credited in that Fund. The management is required to deposit in the account on the last date of every month 50% of the amount of fees recovered, at the prescribed rate, from students. The money credited in the said fund can be applied only for payment of salaries to, and for credit to provident fund accounts of teachers and employees.

Relevant portions of Section 6 deserve to be extracted being crucial to the controversy:

"6. Prohibition on creation of posts and appointments of staff and termination of services. - Notwithstanding anything contained in any law for the time being in force or any rules, regulations, byelaws, statutes or regulations made thereunder, -

(a) On and from the appointed date, -

(i).....

(ii).....

(iii) "no teacher or other employee shall be dismissed or removed from service or his services terminated except by an order passed after following such procedure as may be prescribed." :

Provided that a teacher or other employee may prefer an appeal against his dismissal, removal or termination from service to an appellate authority as the

State Government may, by notification, specify within thirty days from the date of receipt of the order by him and such authority may after holding such enquiry as it may deem fit in the manner prescribed, may either set aside or confirm or modify the said order and pending the disposal of appeal, the appellate authority may also stay the operation of order on such grounds, as it thinks fit;

(iv) No teacher or other employee shall be placed under suspension for more than ninety days without such prior approval of the competent authority :

Provided that the competent authority shall give its approval only after holding such enquiry and within such time as may be prescribed;"

Transitional Provisions are made in clauses (b) and (c) of Section 6 by investing in "competent authority" the power to review all cases of appointment and also of dismissal from service of teachers and other employees, during the period commencing on 17-11-1977 and ending on the date of commencement of the Adhiniyam, if the aggrieved person has made "an application within 30 days from the appointed date." He is vested also with authority to "disapprove" under clause (c) an appointment, but reasons are to be stated. According to Section 7, for anything done, or intended to be done, in "good faith", no suit, prosecution or other legal proceedings shall lie. Section 8 empowers the State Government to exempt any Institution from the provisions of the Act. Section 9 contemplates recovery as arrears of land revenue from the "Management" of any sum not credited by it to the Institutional Fund which it is required to do.

16A. Analysing carefully the provisions aforesaid, I am of the opinion that a body of persons which has obtained registration as a Society under M. P. Society Registration Adhiniyam, 1973, with the object of running an educational institution, unless exempted from the provisions of the Adhiniyam, comes within the definition of the term "management", used in clause 2(g) of the Adhiniyam and that it is difficult for that body to act freely in running the institution in a manner which is not contemplated under the Adhiniyam. Truly speaking, the Adhiniyam contemplates running really by the State Government of the "Non-Government" educational institutions by proxy through registered societies. In the matter of realisation of fees, recruitment of teachers, fixing and paying their salaries and other dues, punishment of any teacher and other employee of the school the entire gamut of administration is regulated and is competently controlled by State Government. This position becomes clear on examining some of the provisions of the Rules framed under the Act.

The Recruitment Rules contain a well-defined scheme for appointment of teachers and other employees and curtails to the minimum the power of the Managing Committee ("Management"). Constitutional provision, in regard to reservation applicable to Scheduled Castes and Scheduled Tribes is required to be observed as in any other Government services and priority is contemplated in respect of "absorption" of teachers or other employees of other institution whose services have been "terminated." Vacancies are to be notified in the manner

prescribed and only when "Non-availability Certificate" is issued to the institution by the Education Officer or the Divisional Superintendent of Education, the vacancy may be filled up, albeit after fulfilment of other prescribed formalities. A candidate duly selected by Selection Committee is only eligible for appointment and in the case of a "Secondary School", the Selection Committee is to be constituted with, among others, the Divisional Superintendent of Education or his nominee as also an Expert in the subject, nominated by him.

According to "Salary Rules", the Institutional Fund has to be operated jointly; the management singly cannot, but under specified conditions the State Government or its nominee can. Financial control is so strict that after pay bills are prepared by the Institution and "passed" by the Educational Officer, there is automatic transfer from the Institutional Fund to the different accounts maintained in respect of different teachers and employees at the Bank/Post Office concerned and "Pass Books" or "Pay Slips" given to teachers and other employees are supposed to reflect the transactions. The Committee running the Institution is required to inform from time to time, the Education Officer, names and addresses of the members of the Governing Body and full details of the Committee.

Provisions made in the Rules in regard to such matters as suspension, disciplinary enquiry and appeals against punishments are also equally elaborate. It will not be perhaps wrong to say that the model followed is more or less that of statutory provisions applicable to Government Servants. In this connection, what is necessary to be highlighted is the role of "Competent Authority" who is a Government Officer because he has a substantial say in the matter of suspension and punishment as his "approval" or concurrence in some manner is contemplated in either case. For punishment, service of show cause notice, charge-sheet and provisions for written statement, inspection, appointment of enquiry officer, enquiry report of enquiry officer, are variously contemplated in D. E. Rules. Under Suspension Rules, approval of "Competent Authority" is necessary when the suspension is for more than 90 days. In the case of disciplinary enquiry the "Management" is required to "forward the whole case along with its proposal of the order intended to be passed" against the delinquent teacher or other employee for the "approval" of the Competent Authority along with latter's power to withhold the approval are circumscribed explicitly (see Rule 12(3) etc.). Provisions of Appeal Rules and also those of Section 6(a)(iii), proviso, make it clear that only one appeal is contemplated, and that the "appellate authority" duly constituted in the manner prescribed in the Appeal Rules, is required to give personal hearing to parties (employee and the management) and to keep in view the various matters specifically enumerated in Rule 10 matching inter alia the requirement of D. E. Rules. On the hearing date fixed, parties may choose to be represented by "authorised representative" and securing representation by a lawyer is not excluded. Whether the penalty imposed "commensurated with the nature of default" is also an enumerated matter. The Appellate Authority is empowered to "pass an order in writing, either setting aside or confirming or modifying the order appealed against". Rule 5

vests significantly discretion in the authority to grant interim stay during the pendency of the appeal.

According to the foregoing analysis of the relevant statutory provisions, the teachers, and employees of any non-Government School to which the provisions of the Adhiniyam apply cannot be regarded to be in employment exclusively of the "Management" of the "Institution" concerned despite clauses (g) and (e) respectively of Section 2 of the Adhiniyam defining those terms in a manner indicative of existence of a separate body of persons or private individuals involved in the running of such educational institutions. It may be true that the employee of such an institution may not hold a "Civil Post" within the meaning of the term employed in Article 310 of the Constitution and would be unable, therefore, to invoke Article 311 to protect their tenure of service. It may also be true that the provisions of Administrative Tribunal Act, 1985 may not even apply to such an employee or teacher because not all types of "service matters" and cases of not all classes of employees, even if the State Government is not concerned with them, are to be dealt with by the Tribunals constituted under that Act. That is this Court's holding in *Vijaysingh Jadon v. State of Madhya Pradesh* 1989MPLJ 255 : 1990 (1) LLJ 383 . The jurisdiction of the Tribunal is confined to the cases contemplated under Sections 3(q), 15 and 19. Clauses (e) and (g) of M. P. Society Registrikaran Adhiniyam, 1973, has, indeed taken out the case of such an employee from the purview of Sections 3(q) and 15 of Administrative Tribunals Act, 1985, as the Governing Body or the Society itself registered under the aforesaid 1973 Adhiniyam cannot be regarded as a "local or other authority" even if "control" is exercised by the State Government in respect to their activities. But, the tests laid down in *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, et.al.* unmistakably apply to the terms "Management" and "Institution" bringing supervention of Article 12 of the Constitution using the term "other authorities" and "control" in regard to determination of rights and obligations inter se of the "Management" and the teachers and employees of the "Institution". They may be legitimately regarded as persons appointed to render public service because they cannot be regarded as rendering service to any private employer. Indeed, they may also be regarded as rendering service in connection with the affairs of the State because Article 41 of the Constitution obligates the State to make "effective provisions for securing right to work, to education." The Adhiniyam is evidently enacted to effectuate the Directive Principles of State Policy contemplated under Article 41 by which effective control is exercised on the affairs of "non-Government" educational institutions by the State to the maximum extent resulting in almost total effacement of private control over them. For all intents and purposes, the affairs of such institutions have become "affairs of the State" in virtue of complete Code enacted in respect thereof by the Adhiniyam and the several Rules aforesaid framed thereunder.

However, I would like to take up the question of "maintainability" later to dispose of the contention that the provisions of the Adhiniyam bar impliedly the jurisdiction of Civil Court in entertaining any suit in respect of any matter dealt

by the Adhiniyan and the Rules framed thereunder. I propose to consider first the plea of limitation. Even so, one contention in regard to one of the reliefs, may be first considered and disposed of separately dehors that plea. Relief clause (a) of para 19 of the plaint, as indicated earlier, in regard to claim of payment of arrear salary is, according to Shri Naik, separable because that relief can be granted on the basis of "Undertaking" of the defendants, proved in the suit as Ex.P-13.

In that regard, the first and for most question is, does the "Undertaking" constitute a valid and enforceable contract? The second question, of course will be, if the contract was time-barred and not enforceable on that account? One thing which is very clear on the face of the document is that it is not addressed to the plaintiff and plaintiff is also not the signatory of the document along with appellant/defendant No. 3. Some other features of the document may also be noted. There is mention of "hunger-strike" of the plaintiff for not being allowed to join duties and for non-payment of her dues. What is also stated in the document is that the "Undertaking" was given by Principal, Shri Laxminarayan Sharma, that he was prepared to allow the plaintiff to join duties from 30-4-1982. He stated also that after plaintiff joins, she will be paid her dues in accordance with the order passed by Collector, Morena. Appellant/defendants pleaded undue influence very rightly to contend that the "Undertaking" was a void document. However, the fact also, as contended, is that the Principal, by himself, had no legal authority to nullify the Resolution passed by the Managing Committee terminating the services of the plaintiff. He was an employee and in any case a Teacher like the plaintiff; even if he was a member of the Managing Committee, his lone voice or individual act was not sufficient to bind the Managing Committee as that carried no legal force or authority. The Society's Constitution, proved as Ex.D-5, shows that all matters concerning all appointments and punishments could be dealt with only by the Managing Committee. I find it impossible, therefore, to accept the contention of Shri Naik that on the basis of the "Undertaking" (Annexure P-13), the suit for arrears salary, as per relief para 19(a), could be decreed. It is not necessary, therefore, to decide at all if the claim based on Ex.P-13 was time-barred.

True, if it is held that for decreeing the relief of declaration that services of the plaintiff had been wrongfully terminated was maintainable, the claim of arrears salary would deserve consideration on that basis. Evidently, in that case, the first question to be decided is, if the suit for declaration was time-barred because the trial Court has taken the contrary view. In this connection, I must immediately observe that there is no scope now to entertain any doubt that to such types of "declaration" Article 58 of the Limitation Act applies. Because, law is now settled authoritatively by the Summit Court in the case of S.S. Rathore Vs. State of Madhya Pradesh, decided by a Seven-Judge Bench of the Court. Clearly and explicitly, their Lordships have held that any suit for declaration against an order of dismissal from service is governed not by the residuary Article 113, but by Article 58 of the Limitation Act.

Still, it is necessary to decide as to when the "right to sue first accrued" to the plaintiff in the instant case as she is required to file her suit within three years from that date under Article 58 for the declaration sought. Admittedly, as proved by Ex. P-1, the services of the plaintiff/respondent were terminated by the Resolution dated 12-3-1979 of the Managing Committee and that was communicated to her under that letter. Although the Resolution was to the effect that her services had been terminated on the date of her suspension as mentioned in Ex.P-1, it can still be accepted that right to sue accrued to the plaintiff to seek declaration in respect of the Resolution only when that was communicated to her. Her case is that she had received the letter (Ex.P-1) on 31-3-1979. In that case, time shall run against her from that date and suit would be evidently barred on 31-3-1982. Her contention, however, is that right to sue for the declaration should not be regarded as having "first" accrued to her on receipt of Ex.P-1 because of subsequent events. Reliance is placed on the letter dated 7-4-1983 (Ex.P-9 = Ex.P-14) which DEO wrote to the Secretary of the Institution. In that letter, the DEO referred to "Undertaking" aforesaid, dated 30-4-1982; and also to the dismissal of the Society's Writ Petition by this Court. He directed that within seven days, plaintiff be joined in service. In regard to that letter, there are three things which are to be pointed out. Firstly, refusal by the appellants/defendants to comply with directions of DEO evidently affect in no manner the cause of action. He had no role to play in any manner in respect of plaintiffs dismissal or her reinstatement. He was not the "competent authority" from whom approval had to be sought in terms of DE Rules, aforesaid; he was also not the "appellate authority" contemplated under the Appeal Rules. Secondly, he merely purported to enforce plaintiffs right, if any, contemplated under the "Undertaking" (Ex.P-13) or under this Court's order (Ex.P-8). About the "Undertaking" and its effect, nothing more need be added to what I have already observed. As regards this Court's order, suffice it to say this much that the petition of the Society being "dismissed for default" nothing was decided by this Court in plaintiffs favour. Thirdly, by that letter, DEO had not for the first time espoused her cause; he earlier, on 29-8-1979, written as per Ex.P-12, to the Secretary, asking him not to give effect to the Resolution adopted by the Society terminating her services. The Society gave him a rebuff, as per Ex.D-6 on 4-9-1979, challenging his authority to give that direction as he was not the "Competent Authority" contemplated under the law. Thus, in regard to DEO's interference and efforts, it can at best be said that limitation could run against the plaintiff at the most from 4-9-1979; in no case, however from 7-4-1983. As held in *Balkrishna Savalram Pujari and Others Vs. Shree Dnyaneshwar Maharaj Sansthan and Others*, right to sue accrues when the right in respect of which declaration is sought is denied or challenged. Defendants having categorically challenged as per Ex.D-6 the right of plaintiff to be reinstated in service by refusing to abide by DEO's direction in that regard, there is no scope to postpone further running of limitation against the plaintiff. As Section 9, Limitation Act contemplates, that run continued till 4-9-1982 when the right became unenforceable in virtue of Article 58. Any supervening event thereafter,

namely, of 7-4-1983 (of Ex.P-9) cannot retrieve the position and revive a time-barred cause of action.

Reliance is also placed on Collector's letter dated 30-4-1982 (Ex.P-5), addressed to the President of Teachers' Association, Morena, but that also is misconceived and futile. That refers to the "Undertaking" dated 30-4-1982 of appellant/defendant No. 3. Copy of that letter, he endorsed to the society and also to DEO besides the plaintiff requesting the society to do the needful in regard to payment of salary to the plaintiff. True, that request the defendant/appellants did not comply with. However, that refusal on their part cannot also be regarded as such act on their part for which right to sue accrued to the plaintiff/respondent to seek declaration in regard to termination of his services or even in regard to payment of arrear salary. The Collector evidently has no statutory role to play under the Adhiniyam in the matter of appointment or punishment of any teacher or employee of any non-Government School. That apart, the "Undertaking" itself being unenforceable, for reasons aforesaid, could not in any manner form any part of the cause of action. Besides, as already pointed out, reliance on Ex.P-5 is expressly negated statutorily by Section 9, Limitation Act, as also, albeit, by the Rathore's case (supra), in which it has been categorically held that the plaintiff by such unilateral act which is statutorily unauthorised cannot extend the period of limitation contemplated under Article 58.

Rathore's case (supra), pressed by Shri Jain, with supreme confidence, is evidently of supreme relevance to his contention concerning the plea of limitation. That was a case of dismissal from service of a "Government Servant" and the question their Lordships decided was that the word "first" used in Article 58, refers not to the first order of dismissal, but to the order passed ultimately in statutory appeal and the right to sue has to be deemed accrued to the plaintiff for the "first" time when decision is rendered against him in his appeal. At para 14 of the Report, they observed: "Powers of adjudication ordinarily vested in Courts and other constituted authorities". At para 20, they stated further as follows:

"20. We are of the view that the cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been availed of, a six months" period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen. We, however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. Repeated unsuccessful representations not provided by law are not governed by this principle".

In the instant case, "Appeal Rules" aforesaid, have the force of law and the plaintiff had a full, complete, adequate and efficacious remedy of an appeal against her dismissal from service. The Appellate Authority is invested with

jurisdiction to deal in specific terms with all contentions of law and facts and pass any order giving any relief to which the aggrieved teacher or employee is found entitled. As contemplated u/s 6(a)(iii), proviso, she could appeal within 30 days of receipt on 31-3-1979 of Annexure P-1 to the Director of Public Instruction, M. P., but she did not avail that remedy. In the instant case, nothing has come on record, in the documents proved by parties, to suggest that she had otherwise even preferred any "representation" to any higher authority against order terminating her services. Even if that had not been disposed of, she would have been entitled to an extension of six months on the ground as contemplated in Rathore's case. Taking any view of plaintiff's case, on facts found and established it is not possible to sustain the finding and conclusion of the trial Court that her suit was not barred by Article 58 of the Limitation Act.

In the circumstances aforesaid, I am constrained to hold that the plaintiffs suit is barred by Article 58, Limitation Act. She instituted the suit on 20-4-1984, much beyond the period of three years prescribed thereunder from the date when the right to sue accrued to her to seek declaration to avoid the order which she received on 31-3-1979.

Obviously, it would be an academic exercise to examine the other contention pertaining to maintainability. Still, counsel having addressed me on that "question as that was raised in pleadings and the relevant issue was decided against the defendants/appellants, judicial imperative to render decision on that in this appeal is inexcusable.

In the earlier part of the judgment I have expressed the view, on careful examination of the provisions of the Adhiniyam and the relevant rules framed thereunder, that any teacher or employee to whom the Adhiniyam applies is to be regarded as rendering public service in connection with affairs of the State because he is not rendering service for a private employer for latter's personal gain. Such a teacher or employee works for the benefit of the public in general, he acts as the medium through which the State Government discharges constitutionally its obligation of providing educational facilities to citizens. Support for that view I derived from Articles 12 and 41 of the Constitution read conjointly with the provisions of the Adhiniyam and the plethora of Rules framed thereunder, which constitute a complete Code (Special Law) in regard to conditions of service of teachers and other employees of "non-Government" educational institutions to which the Adhiniyam applies. Although the "Competent Authority " is associated with imposition of punishment, adjudicatory powers in regard to punishment is vested separately in the Appellate Authority with the object of constituting it as a Tribunal, as contemplated in Rathore's case (supra). It has all the trappings of a "Tribunal" as it is required to act quasi-judicially. Decision is rendered on pleadings, after hearing parties and perusing records. Representation by lawyer even is impliedly contemplated. It is vested with wider powers and jurisdiction than a civil Court's as it can grant interim stay while no temporary injunction in that regard can be granted in a Civil Suit. Proviso (b) of

Order 39, Rule 2(2), CPC (as amended in the State), which is extracted below, bars that relief:

"(b) to stay the operation of an order for transfer, suspension, reduction in rank, compulsory retirement, dismissal, removal or otherwise termination of service of, or taking charge from, any person appointed to public service and post in connection with the affairs of the State including any employee of any Company or Corporation owned or controlled by the State Government; or"

Section 7 of the Adhinyam, read with Section 9, Civil Procedure Code, affords protection, therefore, "to any act which is in good faith done or intended to be done in pursuance of (the Adhinyam) or any rule, order or direction made or given thereunder". In my view, therefore, the implied bar is statutorily projected in Section 7 to permit institution of a suit only in such cases in which any act done under the Adhinyam is challenged as done not in good faith and for redressal of that wrong the Adhinyam Code does not provide adequate and efficacious remedy. That position, according to me, conforms also to the settled law as noted in the Constitution Bench's decision in *Dhulabhai and Others Vs. The State of Madhya Pradesh and Another*, *Shri Jain*, therefore, relied on this Court's decision in *State of M.P. v. Jagdishlal* 1987 CCLJ (MP) 331 : 1988 RN 131, wherein the question of implied bar in the context of *Dulabhai*'s case has been examined in detail. He also relied on this Court's recent decision in *Mahesh Chandra Gupta v. State of Madhya Pradesh*, M.P. No. 1493 of 1990, decided on 21-9-1990 : 1991 MPLJ 520 wherein *Raja Ram Kumar Bhargava (Dead) by Lrs. Vs. Union of India (UOI)*, was examined, explained and applied. *Jagdishlal*'s case (*supra*) arose out of M. P. General Sales Tax Act and *Mahesh Chandra Gupta (supra)* related to another special law, under which disputes between the State Government and a Contractor are decided by an Arbitration Tribunal. Acutely pointed to the instant case is the relevance, however, of *Ram Bahadur Rai Vs. The State of Bihar and Others*, as therein it was held that powers of authorities deciding a dispute under the Industrial Disputes Act were extensive and wider than powers of a Civil Court. That was held to be legitimate consideration for upholding the contention of implied bar within the contemplation of Section 9, Civil Procedure Code. In that case, the argument advanced (albeit rejected) was that even if the right could not be enforced in a civil suit, remedy of injunction was not lost. The remedy of temporary injunction being categorically barred in the instant case, the view I have taken therefore, stands buttressed and reinforced on additional grounds.

Defendant could have, in the instant case, challenged in a civil suit only the order passed in appeal on the ground that the Appellate Authority acting under the Adhinyam passed the order impugned without "good faith"; but, she did not prefer any appeal challenging the order of termination of her services passed by the "Management". Her suit to challenge in civil suit that order for reasons aforesaid, is not maintainable. Because, exclusive jurisdiction in that regard being vested in the Appellate Authority constituted under the Adhinyam civil

court's jurisdiction to adjudicate her claim agitated in the instant suit was impliedly barred.

In course of his arguments, Shri Naik cited case-law which I must examine to reward his labour. *Mst. Rukhmabai Vs. Lala Laxminarayan and Others*, was cited on the question of limitation to press the contention that the residuary Article 113 applies. That was a case of a partition suit of a joint Hindu family and the decision was based on Article 113; but for reasons earlier stated, the holding in *Rathore's* case excludes the application of Article 113 to the instant case. *S.B. Bose Library Association's* case 1979 MPLJ 379 : 1979 JLJ 485 is on the *Adhiniyam*, but the only question examined therein was of vires and not of the interpretation of Section 6 or any of the Rules framed under the *Adhiniyam*. *Sitaram Kashiram Konda's* case (*supra*), cited in the impugned judgment, he also pressed on the scope of Section 9, Civil Procedure Code. Their Lordships held that even if reinstatement cannot be ordered, by decreeing specific performance of a service contract, compensation could still be awarded if case for wrongful dismissal was made out. That general proposition of law evidently does not benefit the plaintiff/respondent whose case has to be examined in the context of her pleadings and her entitlement under the special law. The decision of a learned Single Judge of this Court in the case of *Bharatiya Vidya Mandir*, short-noted in (1983) CCLJ 65, is to the effect that the service of a teacher cannot be terminated without prior approval of the "competent authority". In that case, neither the question of maintainability nor of limitation was in issue. Certain provisions of the *Adhiniyam* came also to be construed in another short-noted decision of this Court in *Rahul Shiksha Parishad's* case 2957 CCLJ 81. Therein also, those two issues were not agitated or decided. Reliance on the case of *Harbans Singh* 1990 MPLJ 112, which was on M. P. Accommodation Act, I fail to comprehend. True, the general rule of interpretation that Courts should give weight to the plain and unambiguous language of the Statute has been emphasised therein. But, I have not taken any other view in construing the relevant provisions of the *Adhiniyam* or of any of the Rules.

To sum up, I hold the suit to be hopelessly barred by limitation. As such, trial Court's decision on merits in respect of the claim made by plaintiff need not be examined. On the question of maintainability also, I reiterate, the suit fails.

In the result, the appeal succeeds and is allowed. The judgment and decree passed by the Court below are set aside. The suit stands dismissed. Parties shall bear their own costs in both courts.