
(2019) 08 JH CK 0124

In the Jharkhand High Court

Case No : Writ Petition (S) No. 1777, 4139 Of 2008

Sarojini Kumari

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 06-08-2019

Acts Referred:

Constitution Of India, 1950 — Article 12, 32, 226, 298

Citation : (2019) 08 JH CK 0124

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Amit Kumar Sinha, Satish Bakshi, Raj Kumar Gupta, Amrita Sinha, Mukesh Kr. Sinha

Final Decision : Dismissed

Judgement

1. Heard Mr. Amit Kumar Sinha, learned counsel for the petitioner, Mr. Satish Bakshi, learned counsel for the respondents-School and Mr. Mukesh Kumar Sinha, learned Sr. S.C. II for the respondents-State.

2. This case has got a chequered history. The petitioner, who was the teacher in Shree D.N. Kamani High School, Bistupur, Jamshedpur (herein after referred to as 'school') was terminated in the year 1999, against which, the petitioner approached this Court by way of filing C.W.J.C. No. 243 of 2000, which was disposed of vide order dated 15.01.2003 with a direction to Vidyalaya Sewa Board to dispose of the matter relating to approval of the dismissal of the petitioner within a period of two months by passing a speaking order. Being aggrieved, the school in question preferred appeal by filing L.P.A. No. 106 of 2003. In the meantime, Vidyalaya Sewa Board refused to approve the said termination order of the petitioner, aggrieved thereof, the school preferred writ petition, being W.P. (S) No. 3313 of 2004. This Court considering the fact that common question of law and facts are involved in L.P.A. No. 106 of 2003 and W.P. (S) No. 3313 of 2004, disposed of both the cases by common order vide order dated 04.01.2005 and set aside the order of termination as also the order

passed by Vidyalaya Sewa Board, however, liberty was reserved with the Managing Committee of the school to proceed against the petitioner from the stage of serving of charge-sheet and conclude the proceeding within a period of four months.

3. In the meantime, the District Education Officer vide letter no. 507 dated 21.04.2005 recommended for cancellation of minority status of the school and for stopping of the government aid granted to it on the ground that in spite of order passed in L.P.A. No. 106 of 2003 quashing the order of termination, the petitioner-teacher is not permitted to work in the school and stated that arrears of pay has to be made by the school management. Being aggrieved, the school preferred a writ, being W.P. (S) No. 2878 of 2005. However, pending hearing of this writ petition, the school management proceeded with the departmental enquiry and again terminated the petitioner from services vide order dated 05.10.2005 and the order of termination was sent by the Management to the Director, Secondary Education for approval. Taking cognizance of the matter, the writ Court disposed of the writ petition, W.P. (S) No. 2878 of 2005 vide order 25.07.2006 directing the Director, Secondary Education to take into consideration the validity of the order of termination by passing a reasoned order in the matter of approval of the order of termination sent by the Management. Pursuant thereto, the Director, Secondary Education, after hearing the parties, passed order dated 24.07.2007, by which he declined to accord approval of dismissal order passed by the school, which was communicated to the petitioner vide memo dated 26.09.2007. But, surprisingly, the same authority i.e. the Director, Secondary Education, passed order dated 16.07.2008, by which, he cancelled the order dated 24.07.2007 passed by his predecessor, and approved the order of termination dated 05.10.2005 passed by School Management. Being aggrieved by order dated 16.07.2008, the petitioner-teacher has filed W.P. (S) No. 4139 of 2008. Here, it would be worthy to mention that being aggrieved with order dated 26.09.2007, the school management had also filed W.P. (S) No. 6205 of 2007, which subsequently withdrawn on 17.10.2008 after passing of impugned order.

4. When this matter was taken up on 28th June, 2019, the respondent no. 4-school took time and the matter was adjourned to 15th July, 2019. Again, on the request of counsel for the respondent no. 4, the matter was adjourned and it was heard on 23rd July, 2019.

5. On 23rd July, 2019, on the preliminary objection raised by the respondent-School that the writ petition is not maintainable against the Aided Linguistic Minority School, upon which, this Court framed the following issues to decide the writ petition:

"(i).As to whether the writ petition is maintainable against the private aided school which is being funded by the State of Jharkhand?

(ii)As to whether the earlier writ petition is maintained before this Court and affirmed up-to the L.P.A sufficient to say that the writ is maintainable?

(iii).As to whether on the ground of alternative remedy, the writ petition can be dismissed? Although, the writ petition is pending since 2008 before this Court.

(iv)As to whether the Director has got a power to review and rectify the earlier order suo motu when it is not provided in the statute?"

6. After framing of issues, learned counsel for the parties were directed to address this Court on the said on the next date of hearing i.e. on 6th August, 2019.

7. On the maintainability of the writ petition, Mr. Amit Kumar Sinha, learned counsel for the petitioner submits that the present writ petitions, filed under Article 226 of the Constitution of India, are very much maintainable as the petitioner is seeking relief against the order passed by the Director, Secondary Education, Government of Jharkhand, who is a Government Official and not a private person. So far ambit and scope of power conferred under Article 226 of the Constitution is concerned, learned counsel for the petitioner submits that the writ Court can entertain a writ even against a private person/body if any public element is involved.

8. In support of his submission, learned counsel relied upon a recent decision rendered by the Hon'ble Apex Court in the case of Marwari Balika Vidyalaya vs. Asha Srivastava & Ors passed in Civil Appeal No. 9166 of 2013 disposed of vide order dated 14th February, 2019 and submits that in view of the law laid down by the Hon'ble Apex Court this writ petition is maintainable.

9. Mr. Sinha, learned counsel for the petitioner further submits that existence of alternative remedy is not an absolute bar and to substantiate his argument, he relied upon the decision rendered in the case of Rajendra Prasad Upadhyaya Vs. State of U.P & Ors in Special Appeal No. 73 of 2012 passed vide order dated 29th March, 2012, in particular paragraph 22, which is quoted herein below:

"22.So far as the legal proposition that the existence of alternative remedy is not an absolute bar, it does not require any adjudication as the law laid down by the Supreme Court as well as this High Court is well settled. In order to summarize the aforesaid legal position we reiterate the same as under-

(i)Statutory alternative remedy is not an absolute bar for the High Court to entertain a writ petition under Article 226 of the Constitution.

(ii)Refusal to entertain a writ petition on existence of statutory alternative remedy is a self imposed restriction broadly based on following considerations, namely;

(a)alternative remedy is adequate, efficacious and speedy. (b)writ petitions involving complex and disputed question of facts may be relegated to statutory alternative forum;

(iv)If a writ petition has been entertained despite there being a statutory remedy, which may be adequate, and the said petition has remained pending for

considerable long time then there would be little justification for relegating the petitioner to the alternative remedy, unless there are valid and cogent reasons for doing so.

(v) Even if there exists an adequate alternative, efficacious speedy remedy in the alternative forum, the High Court may entertain the writ petition in the following circumstances. (a) for enforcement of any of the fundamental rights,

(b) where there has been a violation of principle of natural justice,

(c) where the order or proceedings are wholly without jurisdiction, or

(d) the vires of the Act is challenged.

It will depend upon the facts and circumstances of each case as to whether the discretion of entertaining the writ petition in the light of the availability of statutory remedy has to be exercised or not. There cannot be any straight jacket formula or a hard and fast rule so as to either entertain such writ petition or throw it away at the threshold asking the petitioner to approach the alternative forum."

10. In this regard, learned counsel for the petitioner also relied upon the case rendered in the case of *Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai & Ors* as reported in (1998) 8 SCC 1, wherein the Hon'ble Apex Court at paragraphs 14 and 15 held as under:

"14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose".

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field."

11. On the strength of above-referred judgment, he submits that if the order is without jurisdiction, then certainly the writ petition is maintainable even if

alternative remedy is there.

12. On the other hand, Mr. Satish Bakshi, learned counsel appearing for the respondent no. 4-school submits that so far as order passed by Hon'ble Apex Court in Marwari Balika Vidyalaya (supra) is concerned, the same is distinguishable on the ground that in this case, Hon'ble Supreme Court has considered the Delhi School Education Act and entire judgment is based on Delhi School Education Act and further fact of the present case is entirely different, as such the case law referred by counsel for the petitioner is of no help to the petitioner. The fact of this case is distinguishable of the present case as discussed in paragraphs 2, 3 and 4 (supra).

14. In support of his stand that writ petition is not maintainable, he relied upon the decision rendered in the case of Trigun Chand Thakur Vs. State of Bihar & Ors as reported in 2019 SCC Online SC 879, in which, the Hon'ble Court held that teacher of a privately managed school, even though financially aided by the State Government or the Board, cannot maintain a writ petition against an order of termination from service passed by the Management Committee.

14. To strengthen his submission, learned counsel for the respondent-school further relied upon the Full Bench decision rendered in the case of Smt. Manju Devi vs. District Superintendent of Education, Bhagalpur & Ors as reported in 1987 PLJR 962 (FB), in which, the Hon'ble Court after framing the issue answered in clear term that a teacher in a privately managed school even though financially aided by the State, cannot maintain a writ petition against the termination of his services by such a school.

Learned counsel for the respondent-school also relied upon the Division Bench decision of this Court passed in the case of St. Xavier's School Vs. Kunjal Kumar passed in L.P.A. No. 174 of 2016 vide order dated 15th May, 2018 and submits that the Hon'ble Court held that only the Jharkhand Education Tribunal has got power, jurisdiction and authority to decide the grievance/grievances ventilated by the respondent-teacher of his termination.

15. Mr. Bakshi, learned counsel for the respondent-school further referred to the judgment rendered in the case of Chandra Nath Thakur & Ors Vs. The Bihar Sanskrit Shiksha Board & Ors as reported in (1999) 1 PLJR 529 and submits that Hon'ble Court after taking into account various case laws held that writ petition against an order of termination from service passed by the Managing Committee of a privately managed school, even though financially aided by the State Government of the Board, is not maintainable. In support of his contention, he also relied upon the judgment rendered in the case of Smt. Manju Devi Vs. District Superintendent of Education, Bhagarpur as reported in AIR 1988 Pat 1.

16. Mr. Mukesh Kumar Sinha, learned counsel for the respondents-State adopted the argument advanced by counsel for the respondent-school mutatis mutandi.

17. Argument of learned counsel for the parties ventures this Court to look into

some case laws laid down by Hon'ble Apex Court and High Courts on this issue, besides the case laws referred by counsel for the parties, for better adjudication of the matter, on the question of maintainability of the writ petition.

18. The Hon'ble Apex Court in the case of *Andi Mukta Sadguru Shree MuktajeeVandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani* as reported in (1989) 2 SCC 691 at paragraphs 20, 21 and 22 held as under:

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

21.In *Praga Tools Corpn.v. C.A. Imanuel* this Court said that a mandamus can issue against a person or body to carry out the duties placed on them by the statutes even though they are not public officials or statutory body. It was observed:

"It is, however, not necessary that the person or the authority on whom the statutory duty is imposed need be a public official or an official body. A mandamus can issue, for instance, to an official of a society to compel him to carry out the terms of the statute under or by which the society is constituted or governed and also to companies or corporations to carry out duties placed on them by the statutes authorising their undertakings. A mandamus would also lie against a company constituted by a statute for the purpose of fulfilling public responsibilities.

22.Here again we may point out that mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute. Commenting on the development of this law, Professor de Smith states: "To be enforceable by mandamus a public duty does not necessarily have to be one imposed by statute. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract." We share this view. The judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into watertight compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available "to reach injustice wherever it is found". Technicalities should not come in the way of granting that relief under Article 226. We, therefore, reject the contention urged for the appellants on the maintainability of

the writ petition."

19. Further, the Hon'ble Apex Court in the case of Zee Telefilms Ltd. & Anr. Vs. Union of India & Ors as reported in (2005) 4 SCC 649 at paragraph 70, 75, 110, 147, 152, 153, 159 held as under:

"70. Broadly, there are three different concepts which exist for determining the questions which fall within the expression "other authorities":

(i) The corporations and the societies created by the State for carrying on its trading activities in terms of Article 298 of the Constitution wherefor the capital, infrastructure, initial investment and financial aid, etc. are provided by the State and it also exercises regulation and control thereover.

(ii) Bodies created for research and other developmental works which are otherwise governmental functions but may or may not be a part of the sovereign function.

(iii) A private body is allowed to discharge public duty or positive obligation of public nature and furthermore is allowed to perform regulatory and controlling functions and activities which were otherwise the job of the Government. 75. Article 12 must receive a purposive interpretation as by reason of Part III of the Constitution a charter of liberties against oppression and arbitrariness of all kinds of repositories of power has been conferred - the object being to limit and control power wherever it is found. A body exercising significant functions of public importance would be an authority in respect of these functions. In those respects it would be same as is executive government established under the Constitution and the establishments of organisations funded or controlled by the Government. A traffic constable remains an authority even if his salary is paid from the parking charges inasmuch as he still would have the right to control the traffic and anybody violating the traffic rules may be prosecuted at his instance.

75. Article 12 must receive a purposive interpretation as by reason of Part III of the Constitution a charter of liberties against oppression and arbitrariness of all kinds of repositories of power has been conferred - the object being to limit and control power wherever it is found. A body exercising significant functions of public importance would be an authority in respect of these functions. In those respects it would be same as is executive government established under the Constitution and the establishments of organisations funded or controlled by the Government. A traffic constable remains an authority even if his salary is paid from the parking charges inasmuch as he still would have the right to control the traffic and anybody violating the traffic rules may be prosecuted at his instance.

110. Tests evolved by the courts have, thus, been expanded from time to time and applied having regard to the factual matrix obtaining in each case.

147. There are, however, public duties which arise from sources other than a statute. These duties may be more important than they are often thought or perceived to be. Such public duties may arise by reason of (i) prerogative, (ii)

franchise, and (iii) charter. All the duties in each of the categories are regarded as relevant in several cases. (See A.J. Harding's Public Duties and Public Law, pp. 6 to 14.)

Development in this branch of law as in others has always found differences. Development of law had never been an easy task and probably would never be.

152. Judicial review forms the basic structure of the Constitution. It is inalienable. Public law remedy by way of judicial review is available both under Articles 32 and 226 of the Constitution. They do not operate in different fields. Article 226 operates only on a broader horizon.

153. The courts exercising the power of judicial review both under Articles 226, 32 and 136 of the Constitution act as a "sentinel on the qui vive".

159. This aspect of the matter has been considered in *Andi Mukta Sadguru*. It has clearly been stated that a writ petition would be maintainable against other persons or bodies who perform public duty. The nature of duty imposed on the body would be highly relevant for the said purpose. Such type of duty must be judged in the light of the positive obligation owed by a person or authority to the affected party."

20. In the same line, the Hon'ble Apex Court in the case of *Francis John v. Director of Education* as reported in (1989) Suppl 2 SCC 598 at paragraphs 5 and 10 held as under:

"5. From a reading of the relevant rule of the Grant-in-aid Code which is a part of the public law of the land it becomes obvious that the reference of the dispute between the management of the school and the appellant to the Disputes Settlement Committee was made by the Director of Education in exercise of the powers conferred on him by the Grant-in-aid Code, which is issued by the government in exercise of its executive power, even though it may not have been done under a statute. The Director of Education who is a public functionary has given his approval to the decision of the Disputes Settlement Committee before it was communicated to the school. While granting his approval to the decision the Director of Education is discharging a governmental function as an authority constituted for the said purpose by the government. It is obvious that the management, in the circumstances could not have terminated the services of the appellant without the communication received by it from the Director of Education. In such circumstances it cannot be said that the decision is that of just a private management governed by private law. It is the part of the process of the public law which affects public exchequer.

10. In the instant case also we are concerned with the Grant-in-aid Code. The decision which was challenged before the High Court was the order of the Director of Education dated 12-7-1984 which is fully extracted above. It is further seen that a copy of the above order has been communicated by the Director of Education not merely to the management of the school but also to the

Zonal Officer, North Educational Zone, Mapsa and the Grant-in-aid Section of the Directorate of Education. If the impugned orders of the Director of Education and of the Disputes Settlement Committee to which he had referred the case are set aside then the order of termination of service of the appellant, which is pursuant to them, would also have to fall. Any private school which receives aid from the government under the Grant-in-aid Code, which is promulgated not merely for the benefit of the management but also for the benefit of the employees in the school for whose salary and allowances the government was contributing from the public funds under the Grant-in-aid Code cannot escape from the consequences flowing from the breach of the Code and particularly where the Director of Education who is an instrumentality of the State is participating in the decision making process. Under these circumstances we find that the High Court was wrong in upholding that the orders of the Director of Education and of the Disputes Settlement Committee were not amenable to the jurisdiction of the High Court under Article 226 of the Constitution since the matter squarely falls within the principles laid down by this Court in *Tikaram* case."

21. This Court also examined the judgment rendered in the case of *M. Raja Vs. Ceeri Educational Society Pilani & Anr* as reported in (2006) 12 SCC 636, wherein the Hon'ble Court has been pleased to hold that interference in the affairs of private educational institutions would be justified only if public element is involved. The Hon'ble Court in the case of *State of H.P. Vs. H.P. State Recognised & Aided Schools Managing Committees & Ors* as reported in (1995) 4 SCC 507 held that writ petition is maintainable against private person if the public law element is involved. Likewise in the judgment of *K. Krishnamacharyulu & Ors Vs. Sri Venkateswara Hindu College of Engineering & Anr.* as reported in (1997) 3 SCC 571 held that writ under Article 226 of the Constitution of India has been held to be maintainable if public law element is involved.

22. Further, the Hon'ble Apex Court in the case of *Ramesh Ahluwalia vs. State of Punjab & Ors* as reported in (2012) 12 SCC 331 held that writ has been held to be maintainable against private schools, if it performs public functions.

23. In the case of *Marwari Balika Vidyalaya (Supra)*, the moot question for consideration before the Hon'ble Apex Court was with regard to maintainability of the writ petition as against the private school receiving grant in aid to the extent of dearness allowance. In the case of *Marwari Balika Vidyalaya (Supra)*, the petitioner-teacher, who was working in a privately managed primary school, was terminated against which, the petitioner-teacher preferred writ petition, which was dismissed on the ground that as the concerned school was not a recognized primary school by the State Government but a privately managed primary school, writ application is not maintainable. Against which, the petitioner-teacher preferred appeal, which was allowed and the petitioner-teacher was allowed to join the school with full entitlement of salary, allowances and service benefits, as per law. Against the order passed by the Division Bench, the respondent-school preferred Civil Appeal No. 9166 of 2013 before the Hon'ble Supreme Court, in

which, the Hon'ble Court giving reference to various case laws, dismissed the appeal and came to the finding that writ petition is maintainable. For better appreciation of the matter, the relevant paragraph 15 of the judgment is quoted herein below:

"15. Writ application was clearly maintainable in view of aforesaid discussion and more so in view of the decision of this Court in *Ramesh Ahluwalia v. State of Punjab & ors.* (supra) in which this court has considered the issue at length and has thus observed:

"13. In the aforesaid case, this Court was also considering a situation where the services of a Lecturer had been terminated who was working in the college run by the Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust. In those circumstances, this Court has clearly observed as under: (V.R. Rudani case⁴, SCC pp. 700-701, paras 20 & 22)

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

22. Here again we may point out that mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute. Commenting on the development of this law, Professor de Smith states: 'To be enforceable by mandamus a public duty does not necessarily have to be one imposed by statute. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract. We share this view. The judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into watertight compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available 'to reach injustice wherever it is found'. Technicalities should not come in the way of granting that relief under Article 226. We, therefore, reject the contention urged for the appellants on the maintainability of the writ petition."

The aforesaid observations have been repeated and reiterated in numerous judgments of this Court including the judgments in *Unni Krishnan* and *Zee Telefilms Ltd.* brought to our notice by the learned counsel for the appellant, Mr Parikh.

14. In view of the law laid down in the aforementioned judgment of this Court, the judgment of the learned Single Judge as also the Division Bench of the High Court cannot be sustained on the proposition that the writ petition would not be maintainable merely because the respondent institution is a purely unaided private educational institution. The appellant had specifically taken the plea that the respondents perform public functions i.e. Providing education to children in their institutions throughout India."

(emphasis supplied)

It is apparent from the aforesaid decisions that the Writ Application is maintainable in such a matter even as against the private unaided uneducational institutions."

24. So far submission of Mr. Bakshi, learned counsel for the respondent-school that it is not applicable in the facts of present case is concerned, it is well settled proposition of law that judgment needs to be examined in its entirety and not on the basis of a particular point, hence, looking into the judgment of Marwari Balika Vidyalaya (Supra), the submission of Mr. Bakshi, is not accepted by this Court and this Court finds that the case of the petitioner is squarely covered by the Marwari Balika Vidyalaya (supra) case.

25. Now coming to the facts of the case to decide the issue of maintainability, admittedly, the Director, Secondary Education, after hearing the parties concerned, passed order dated 24.07.2007, whereby he declined to accord approval of dismissal order passed by the school. Here, it would be apt to mention that no rule/circular or any chit of paper has been brought on record to show that the same authority has any power to review the same. But, surprisingly, the same authority i.e. the Director, Secondary Education, passed order dated 16.07.2008, whereby he cancelled the order dated 24.07.2007 passed by his predecessor, and approved the order of termination dated 05.10.2005 passed by School Management that too without affording opportunity of hearing to the petitioner-teacher. It is well settled proposition of law that once the authority passed the order, it becomes functus officio and he has no power or authority to change that order.

26. At this stage, counsel for the respondent-school submits that the impugned order dated 16.07.2008 was clarifactory in nature and the authority at any stage can correct its order. This Court is not satisfied with the submission advanced by counsel for the respondent-school for the reason, as mentioned in the preceding paragraph.

27. Having heard learned counsel for the parties and looking to the various judgments rendered by Hon'ble Apex Court and Hon'ble High Courts and as also the fact that the school in question is being given financial aid so far salary and pension is concerned, and further the appointment of such teachers are being approved by the State Government, and also taking into account the fact that the impugned order has been passed by the Director, Secondary Education that

too without jurisdiction, this Court finds that the public element is fully involved in this writ petition. It will also be worthwhile to mention here that the parties are in litigating terms for about last two decades, hence, at this belated stage, submission of availability of alternate remedy, even if it is there, has no leg to stand and shall not come in the way of the Court to adjudicate the matter. Accordingly, for the reasons aforesaid this Court holds that writ petition under Article 226 of the Constitution of India is maintainable in the facts and circumstances of the present case. Accordingly, the issue nos. (i) and (ii) framed by this Court are answered.

28. On the merit of the case, learned counsel for the petitioner assailed the impugned order on two grounds. The first limb of his argument is that once the Director, Secondary Education passed order dated 24.07.2007, whereby he declined to accord approval of dismissal order passed by the school, it attained finality. But the new incumbent, who has no power to review the order, suo motu without providing any opportunity to the petitioner passed the impugned order dated 16.07.2008 whereby he cancelled the order dated 24.07.2007 passed by his predecessor, and approved the order of termination dated 05.10.2005 passed by School Management is in utter violation of settled principle of law that once the order is passed by any authority it becomes functus officio. He further submits that there is no statutory provision to review the order.

29. In support of his submission, he relied upon the case of Dr. (Smt.) Kuntesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P.) & Ors as reported in (1987) 4 SCC 525 as also the decision rendered in the case of Kalabharati Advertising v. Hemant Vimalnath Narichania as reported in (2010) 9 SCC 437, in particular paragraph 12, which is quoted herein below:

"12. It is settled legal proposition that unless the statute/rules so permit, the review application is not maintainable in case of judicial/quasi-judicial orders. In the absence of any provision in the Act granting an express power of review, it is manifest that a review could not be made and the order in review, if passed, is ultra vires, illegal and without jurisdiction."

30. To strengthen his argument, he further relied upon the case rendered in the case of Sunita Jain v. Pawan Kumar Jain as reported in (2008) 2 SCC 705, in particular paragraph 33, which is quoted herein below:

"33. It is also well settled that power of review is not an inherent power and must be conferred on a court by a specific or express provision to that effect. No power of review has been conferred by the Code on a criminal court and it cannot review an order passed or judgment pronounced."

31. The other ground for assailing the impugned order by learned counsel for the petitioner is that for absent for 12 days the order of dismissal from service is disproportionate to the charges, hence the Director, Secondary Education vide order dated 24.07.2007 has rightly declined to accord approval of dismissal order passed by the school, which has attained finality.

32. On the other hand, Mr. Satish Bakshi, learned counsel for the respondent-school submits that the Director, Secondary Education vide order dated 16.07.2008 has not reviewed the order rather he has only rectified the earlier order dated 24.07.2007 passed by his predecessor. He further submits that case at hand cannot be equated with other States where there is statutory provision, as there is no statutory provision in this regard, the Director, Secondary Education has got sufficient power to rectify order. So far, dismissal of the petitioner on the ground of absentism for 12 days is concerned, it has been passed after conducting proper enquiry proceeding. So far order dated 16.07.2008 passed by Director, Secondary is concerned since it is a order in the nature of rectification/clarification, there was no need for calling for the petitioner; hence the impugned order needs no interference by this Court.

33. Having heard learned counsel for the parties and on going through the case laws referred by the parties, this Court finds that the new incumbent has got no jurisdiction to review the order passed by his predecessor-in-office as it is well settled proposition of law that once the authority passed the order, it becomes functus officio and he has no jurisdiction to change/alter that order. In the case at hand, the order has been completely reversed that too without providing any opportunity of hearing, hence the impugned order is hit by principles of natural justice also. Moreover, It is well settled principles of law that if there are two interpretations, the interpretation which is in favour of the have not is said to be correct interpretation. Furthermore, it appears that for absent of 12 days, the petitioner was dismissed from services, against which the petitioner knocked the door of this Court and after round of litigations, termination order was set aside. From the litigation history of the case at hand, it appears that the respondent-school management, being bent upon to dismiss the petitioner from services, has entered into several round of litigation. Accordingly, issue No. IV is answered.

34. For the reasons aforesaid, the impugned order dated 16. 07.2008 is hereby quashed and it is held that the petitioner will be entitled to get full salary, allowances and service benefits in accordance with law. It is expected that all benefits shall be extended to the petitioner within a period of eight weeks from the date of receipt/production of copy of this order.

35. With the aforesaid observations and directions, the writ petition (W.P. (S) No. 4139 of 2008) stands allowed.

W.P. (S) No. 1777 of 2008

36. In view of the disposal of W.P. (S) No. 4139 of 2008, and the fact that petitioner has now retired as per the submission made at Bar, the writ petition has become infructuous.

37. Hence, this writ petition is dismissed as infructuous.