
(1976) 07 GUJ CK 0007
In the Gujarat High Court

Satsangi Shishuvihar Kelavani Trust and Others APPELLANT
Vs
P.N. Patel and Others RESPONDENT

Date of Decision : 05-07-1976

Acts Referred:

Gujarat Secondary Education Act, 1972 — Section 36(1)(b), 36(1)(b) , 36(2)
Gujarat University Act, 1949 — Section 51A, 52 A
Industrial Disputes Act, 1947 — Section 11A

Citation : (1977) 18 GLR 615

Hon'ble Judges : J.B. Mehta, Acting C.J.;P.D. Desai, J

Bench : Division Bench

Judgement

J.B. Mehta, Ag. C.J.

1. The petitioner-registered trust in the first petition challenges the order of the Tribunal under the Gujarat Secondary Education Act, 1972, (here in a Her referred to as "the Act"), dated September 1, 1975, at Annexure C, by which the Tribunal has declared invalid the notice terminating the services of opponent No. 1 teacher and it has further declared that opponent no 1. Teacher continued in service and would be entitled to receive his back wages. Opponent No. 1 was engaged in this school on June 11, 1973, as a probationer. A show cause notice was issued to this teacher on April 4, 1975 at Annex, A, on various grounds mentioned in the said notice. The teacher had submitted his reply on April 9, 1975. The management had proposed termination of the service of this teacher and had sought approval of the D.E.O. u/s 36(1)(b) of the Act as the D.E.O. was the officer authorised in this behalf by the Board. This proposal was received by the D.E.O. on April 16, 1975. The D.E.O. kept the matter for hearing on April 28, 1975. The management during the dependency of this proceeding by the order at Annex. B dated June 18, 1975, terminated the services of opponent No. 1 on the ground that considering his conduct and as he was on probation his further continuance in service was not considered to be in the interest of the school. It was further stated in the said order that his explanation was not satisfactory and as the approval against the proposed action had been sought from the D.E.O.

who had heard the parties but as within the prescribed period his approval order had not been received u/s 36(2), the said action was deemed to have been approved by the said officer and, therefore, the services of opponent No. 1 on the expiry of his probationary period were terminated. The D.E.O had passed the order dated June 13, 1975, refusing approval, which however had been received by the school authorities only on June 21, 1975. The aggrieved teacher had, therefore, moved the Tribunal by raising a dispute u/s 38(1) in respect of this order terminating his services by an application made to the Tribunal on June 23, 1975, and the management had also filed an appeal against the D.E.O's order before the Tribunal on June 30, 1975. In both the proceeding the Tribunal passed this common order. It set aside the order terminating the services of this teacher and reinstated him as aforesaid with back wages and the appeal filed by the managing trustee had also been dismissed. That is why petitioner No. 1 the trust, along with its manager petitioner No. 2, have challenged the aforesaid order of the Tribunal in this petition. 2. Mr. Patel raised four points in this petition:

1. As the management had complied with the provisions of Section 36(1)(a) and (b), the Tribunal had no jurisdiction to set aside the impugned order of the management;

2. As the D.E.O. had not communicated his decision within 45 days to the management the approval was deemed to have been granted u/s 36(2) and on that short ground the management's appeal should have been allowed by the Tribunal.

3. Once Section 36(1)(b) has thus been properly complied with and the management's proposed action has been deemed to have been approved, the Tribunal would have no power to decide the dispute on merits by taking evidence and, therefore, the impugned order was completely without jurisdiction.

4. That in any event, the Tribunal had not duly appreciated the evidence led in the case and, therefore it should not have interfered with the management's order by deciding the dispute on merits.

3. Before we go into the relevant contentions in both the petitions, it would be proper to consider at the outset the relevant scheme of the Act. The Act has been enacted for regulation of secondary education in the State of Gujarat and to establish a Board for that purpose and it has received assent on September 28, 1973. u/s 2 (u) secondary education has been defined as education including post-basic education, in such subjects from eight standard up to such standard as may, by general or special order from time to time, be determined by the State Government. u/s 2(v) secondary school is a school imparting secondary education. Section 3 provides for the constitution, incorporation and powers of the Board, viz. Gujarat Secondary Education Board, which consists of ex-officio members, elected members and nominated members as provided therein. u/s 17 the Board has wide administrative powers, including those of financial control, and under Clause (8) to recommend to the State Government a cut in

maintenance grant after giving a reasonable opportunity of being heard to the management of the school, if the Board was of the opinion that a registered school had failed to observe any of the conditions of registration or that it was conducted or had failed to carry out any instructions issued by the Board to ensure maintenance of academic standards in secondary education. The Board prescribed educational standards and was entrusted with the entire educational policy. Under Clause (11) it could prescribe the standards, including qualifications, for appointment of the staff of a registered school and the standard requirement in respect of building, laboratory, library, furniture, equipment stationery and other article for conducting registered schools. Under Clause (13) the Board has to prepare and maintain a register containing names of candidates qualified to be appointed as teachers in registered private secondary schools in the State, and also under Clause (14) a register containing names of teachers who are willing to be selected for appointment as teachers in other registered private secondary schools in the State, under Clause (15) it has to circulate the registers prepared under Clauses (14) and (15) among the registered private secondary schools. Under Clause (16) it is as to exercise proper and effective control on the academic performance and conduct of head masters and teachers of registered private secondary schools and to issue instructions to the management of such schools. Under Clause (24) the Board has to cause academic inspection of registered schools by a person authorised by it and to take measures to ensure that proper standards of education are maintained therein and that adequate library and laboratory provisions are made therein. Under the material Clause (26) the board could lay down qualifications, methods of selection and conditions of appointment, promotion and termination of employment and rules for conduct and discipline of the headmaster and the teaching and non-teaching staff of registered private secondary schools. Under Clauses (43) and (44) the Board could make regulations for purposes of carrying into effect the provisions of the Act, and could do all other such acts and things as may be necessary to carry out the purposes of the Act which it had been duly empowered. Chapter IV deals with registration and u/s 31(1) no person shall impart secondary education through a school unless such school is registered under the provisions of the Act. Chapter V lays down the procedure for taking over management of registered schools, Chapter VI which is material for our purposes deals with the provisions relating to services in registered private secondary schools.

4. Chapter VI makes these provisions relating to services in registered private secondary schools so as to effectively control the right of hire and fire of the management. In Sections 34 and 35 adequate provision is made so that the Board can regulate by statutory regulations fresh recruitment and conditions of service and new appointments can be made only by proper staff selection committees as provided therein, where management's voice is effectively curtailed. Section 35(7) nullifies any appointment of a head master or a teacher made in contravention of the provisions of Section 39. Section 36(1) then

provides a double fetter on termination of service of a head master, a teacher or a member of a non-teaching staff of a registered private secondary school by enacting that no person shall be dismissed or removed or reduced in rank nor shall his service be otherwise terminated by the manager until-

(a) he has been given by the manager a reasonable opportunity of showing cause against the action proposed to be taken in regard to him, and

(b) the action proposed to be taken in regard to him has been approved in writing by an officer authorised in this behalf by the Board.

Because of the proviso this safeguard is not applicable to persons who are appointed for a temporary period only. u/s 40A the minority institutions are also saved and this safeguard is not applicable in their cases. This sub-section secures full compliance of the principles of natural justice and requires previous permission of the Board's authorised officer before the services are terminated. Section 36(2) provides for a deemed approval if such authorised officer fails to communicate the decision to the manager within a period of 45 days from the date or receipt by him of the proposal for taking such action of dismissal, removal, reduction or otherwise termination of the service of the head master, teacher or a member of a non-teaching staff. In Section 36(3) an identical provision of deemed ratification is made in case of suspension pending enquiry if the authorised officer fails to communicate his decision within the said period of 45 days from the receipt of the communication in this behalf of the proposal and thereupon the suspension under reference shall cease to have effect on the expiry of that period. u/s 36 (5) an appeal is provided to the Tribunal within the period of 30 days from the date of decision of the authorised officer by any person who is aggrieved by the order u/s 36 (1)(b) of approval of the action taken. No appeal is provided in case of orders u/s 36(3) regarding suspension pending an enquiry. Section 38(1) which is also a material provision provides that where there is any dispute or difference between the manager of a registered private school and any person in service of such school as head master, a teacher or a member of non-teaching staff, which is connected with the conditions of service of such person, the manager or, as the case may be, the person may make an application to the Tribunal for the decision of the dispute. u/s 38(2) as from the appointed day the State Government or any authorised officer shall have no jurisdiction to decide any pending dispute of the nature of one falling u/s 38(1) and it has to be transferred to the Tribunal for its decision. Thus, both the original and the appellate jurisdiction has been conferred on the Tribunal and pending disputes are also to be transferred to the Tribunal. The Tribunal is an independent Tribunal constituted u/s 39(1) of a person with high judicial stature and experience as is provided in Section 39(3). The Tribunal is empowered to entertain and decide original disputes u/s 38(1), the disputes transferred u/s 38(2) or u/s 49(2), which are suits and proceedings pending in a civil Court on the appointed day which are also to stand transferred and to be continued before the Tribunal, and also to entertain and decide appeals in the

matter of approval of action taken u/s 35(1) by virtue of Section 36(5). For this purpose the Tribunal is invested with powers of a Civil Court when trying a suit u/s 39 (6) by enforcing attendance of any person and examining him on oath; compelling the production of documents and material objects; issuing commissions for the examination of witnesses and as regards other prescribed matters. And even by a general order issued u/s 39(5) known as Gujarat Secondary Education Tribunal (Procedure) Order, 1974, by the State Government, the Tribunal is under para 14 to follow as far as such procedure is applicable, the procedure in the CPC in respect of matters not provided for in that order. Under Clause (7) of Section 38, the Tribunal is deemed to be Court for condoning delay for the purpose of Section 5 of the Limitation Act, 1963. The whole scheme is to provide a complete and exhaustive Code of service conditions and security of tenure not only providing statutory regulations enacted by the Board which are to prevail u/s 37, as any inconsistent contract is to that extent made null and void, but the procedure for resolving a dispute between the manager of this registered private secondary school and any person in service of such school as a head master, teacher or a member of a non-teaching staff has been laid down and the decision of the Tribunal is made final u/s 39(8), and no suit shall lie in any Civil Court in respect of matters decided by it. Section 40 specifically bars the jurisdiction of Civil Courts to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the Tribunal, and pending suits and proceedings are to be transferred to and continued before the Tribunal.

5. The background of this statutory scheme must be borne in mind as when the teachers' conditions were regulated only by administrative instructions under the grant-in-aid Code the settled legal position was as laid down in *Kumari Regina Vs. St. Aloysius Higher Elementary School and Another*, their Lordship had in terms held that ordinarily the relations between the management of an elementary school and the teachers employed in it would be governed by the terms of the contract of employment and the law of master and servant in the absence of any statute controlling or abrogating such a contract of employment and providing to the contrary. The more fact that such a school had obtained recognition aid from the education department would not mean that the relations between its management and its employees had ceased to be governed by the contracts of employment under which the employees were recruited and by the law of master and servant unless there was some provision in the Act overriding that law as one found in statutes dealing with industrial disputes and similar other matters. Therefore, it was held that an aggrieved employee of a school could have no enforceable remedy at law in the event of the management of an elementary school refusing to comply with the administrative instructions under the grant-in-aid Code. The Government had framed these administrative instructions to achieve uniformity and certainty in the exercise of its executive power and to avoid discrimination in the matter of recognition of grant-in-aid. If such administrative rules had laid down conditions, the Government could insist

that satisfaction of such conditions would be a condition precedent to obtaining recognition and aid and that a breach or non-compliance of such conditions would entail either the denial or withdrawal of recognition and aid. The management of a school would commit a breach or noncompliance of the conditions laid down in the rules on pain of deprivation of recognition and aid. But the enforcement of such administrative rules under the grant-in-aid Code was held to be a matter only between the Government and the management and a third party, such as a teacher, aggrieved by order of the management, could not derive from the rules any enforceable right against the management on the ground of a breach or non-compliance of any of the rules framed under the grant-in-aid Code. To remedy this situation and for improving the plight of this weaker section of the ill-paid teachers this statutory Code has now been enacted, with the assent of the President, which lays down these statutory conditions with these fetters on the management's contractual right of hire and fire so that the teachers would have a security of tenure and would be able to enforce their special rights created by these statutory conditions in this newly created forum of the Tribunal, which grants them this exclusive cheap efficacious remedy and to that extent the Civil Court's jurisdiction has been taken away by enacting this completely exhaustive Code. It is in the light of this background that the contentions urged have to be examined when the statutory Code now seriously fetters the right of the management and provides for this independent forum for resolving the dispute so that the rights created by this statutory Code would be duly implemented and disputes would be resolved by a just decision of the Tribunal, keeping in mind the four-fold interests of the teachers, students community, the management and the public interests, represented by the education department or the Board.

6. Now we shall consider the various contentions, which have been urged before us. The first contention which was urged was that Sections 36 and 38 operate in two distinct fields as one is confined to matters of discharge, dismissal, removal or reduction in rank, while the other deals with other conditions of service and, therefore, even though the jurisdiction of the Tribunal is appellate u/s 36(5) in the matter of approval of action proposed to be taken u/s 36(1)(b), and the jurisdiction is original for determination of dispute u/s 36(1), in both the jurisdictions, the Tribunal would be exercising substantially the same or identical jurisdiction. This contention of Mr. Nanavati is wholly untenable as Section 40A provides a complete answer. The minority institutions having been excluded from the scope of Section 36(1)(b) and Section 36,(2),(3),(4) and (5), there would be no question of this second safeguard in case of those minority institutions, and if the services of employees in such institutions have been terminated, the aggrieved employees would have the only remedy of raising a dispute u/s 38(1) in the original jurisdiction of the Tribunal. When the Tribunal is conferred specific jurisdiction u/s 39(9) to decide a dispute about dismissal, removal, reduction or discharge, being wrong, unlawful or otherwise unjustified, and of giving relief of reinstatement with all back wages by reviving the terminated contract, it is

obvious that Section 38(1) is a section of wide amplitude. Section 38(1) would cover all disputes between a manager of a registered private secondary school and any person in such service of school as head master, teacher or a member of the non-teaching staff, which are connected with the conditions of service of such a person, and in that context even ex-employee or discharged employee who claims relief of reinstatement would be a person who would be raising a dispute regarding the termination of his employment in violation of the statutory protection granted by this Code. The difference between the two schemes of appellate jurisdiction and the original jurisdiction would have however, to be found out from the fact that the appellate remedy u/s 36(5) is available to a person aggrieved by the order of the authorised officer u/s 36(1)(b), which would be at the stage, while a person is still in service, because of approval or non-approval being only of the proposed action. Once the services are terminated the concerned employee would have a further cause of action u/s 38(1) to challenge the dismissal, discharge, removal or otherwise termination as wrongful and unjustified by raising a dispute u/s 38(1) which would be decided in this original jurisdiction.

7. The second contention which was urged was that the fiction created by Section 36(2) is not a mandatory fiction and it must be treated as a provision capable of being waived by the management, by participating in the enquiry, or that when the authorised officer intimates that further enquiry is to be done, such a fiction could never arise. It was vehemently argued by Mr. Mehta that the whole object of Section 36(2) was to enable the concerned employee to continue him in employment and to enable him to right while continuing in service, and so both the appellate and the original jurisdiction under these two relevant provisions must have conferred same power on the Tribunal, unrestricted by any doctrine of management function on the misconceived analogy of Section 33 or Section 33A of the Industrial Disputes Act, especially after the decision in *The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another*, . In that context the contention was that the management function doctrine could not apply, and at both the stages the Tribunal must have full jurisdiction to decide the question once for all on merits, as otherwise there would be a mere duplication and overlapping of two remedies which must be avoided on harmonious construction so as to make the Tribunal's decision final. Even the ground of hardship was pressed in aid because we were told that the Tribunal was already exercising wide jurisdiction of complete enquiry on merits unrestricted by the management function doctrine, even at the appellate stage. Therefore, these decision? might be affected by this narrow interpretation.

8. In order to consider these contentions summarised by us, it would be proper to consider the decision in *The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another*, , where the question of virus of the corresponding scheme of Sections 51A and 52 A of the Gujarat University Act, 1948, corresponding to Sections 36 and 38 of the Act had been before their Lordships. The question had arisen in a totally different context as to whether

those restrictions were permissive regulations or they were unduly displacing the management so as to violate the guarantee of Articles 29 and 30 of the minority institutions. The difference in the majority and minority view was on the score of violation of the fundamental right of the minority institutions under Article 30. In the minority view of Dwivedi J. at pages 1470-71 such a scheme of Section 51A imposing such a double fetter on the management's right to terminate services of employees was held to be a check on the misuse of the right to fire an employee. The security of service was necessary to promote efficiency and honest discharge of duty. These employees could not ordinarily go to Courts for redress of their grievances and so cheaper and expeditious remedy had been provided for redress of their grievances by arbitration procedure in Section 52A and, therefore, the impugned provision were found to be identical to Section 33 of the Industrial Disputes Act, which was always held to be valid. As the power of approval was confined to checking the abuse of the right to fire employees, the provision was held to be permissible regulation. The same was held to be true of Section 52A providing for arbitration of such dispute connected with the service of the employees in the University. In short, both these provisions were held to be intended to check abuse of power exercised by the managing body and to provide for efficacious and expeditious remedy to such teachers and members of the non-teaching staff and they were found to be necessary in the interest of security of service. Therefore, the minority view was that there was no legitimate objection to both these provisions under Article 30(1). In the majority view the learned Chief Justice had at page 1400 in terms held that such an approval provision like Sections 51A (b) was intended to be a check on the administration. Similarly, Section 52A also was seeking to displace domestic jurisdiction of the governing body and, therefore, new jurisdiction was sought to be created on the administration and these two provisions could not be held to be permissive regulations and they were hit by the guarantee embodied in Article- 30(1), We are not concerned with that aspect which had been concluded by this decision as to whether the fundamental right of Article 30(1) of the minority institutions would be affected or not by such provisions because the legislature itself had excluded u/s 40A the minority institutions from the safeguard of approval u/s 36(1)(b) Even Section 38 which applies to the minority institutions confers power on such an independent Tribunal of such high judicial status and experience and, therefore, such a provision has not to be tested before us from the point of view of guarantee of Article 30(1) of the Constitution. What we are concerned with is that the larger Constitutional Bench decision of their Lordships clearly settles the true interpretation of such a scheme of fetters on the management's right to fire an employee. This would be clearly in the nature of a bar or a fetter, which provides previous approval being obtained at the stage of proposal itself. After the termination, the dispute is to be decided and the Tribunal is given powers u/s 38(9) which are analogous to the newly enacted Section 11A of the Industrial Disputes Act. Therefore, St. Xavier's case could never be pressed in aid to support the contention that the doctrine of management function would not apply so far as the first enquiry was concerned at the approval stage when the

disciplinary action proposed had only to be approved.

9. The controversy centered round the term "approval" but the legislative intention is clearly expressed in Section 36(1)(b) that it is approval of the action proposed to be taken. The second meaning, which had been suggested while interpreting Section 33 of the Industrial Disputes Act in *The Lord Krishna Textile Mills Vs. Its Workmen*, and finally accepted in the *Strawboard Manufacturing Co. Vs. Gobind*, , would not make the term ambiguous in this case. It is true in the context of Section 33 of the Industrial Disputes Act their Lordships finally concluded in the *Straw Board. Mfg. Co.*'s case that in the context "approval" suggested that something had been done by the employer as otherwise it would have been quite easy for the legislature to use the word "for approval of the action proposed to be taken" in the relevant proviso. Their Lordships pointed out that if the Tribunal did not approve of the action taken by the employer, the result would be that the action taken by him would fall and thereupon the workman would be deemed never to have been dismissed or discharged and would remain in the service of the employer. In such a case no specific provision as to reinstatement was necessary and by the very fact of the Tribunal not approving the action of the employer, the dismissal or discharge of the workman would be of no effect and the workman concerned would continue to be in service as if there never was any dismissal or discharge by the employer. In that sense, the order of discharge or dismissal passed by the employer did not become final and conclusive until it was approved by the Tribunal u/s 33(2). The fetter laid down in the present case in Section 36(1)(b) however is unambiguous and clear in its scope, as the legislature has categorically used the expression of "action proposed to be taken" and, therefore, approval in this context has only one meaning of a previous permission, of-course, such a function of approval must be of an objective approach. In *Rampur Distillery and Chemical Co. Ltd. and Another Vs. Company Law Board and Another*, , while interpreting Section 326 of approving appointment of managing agent the nature of satisfaction of the Central Government had to be examined. At page 1792 their Lordship pointed out that investment of such power of approval of the managing agents carried with it a duty to act judicially, i.e. to hold an enquiry in a manner consistent with rules of natural justice, to consider all relevant matters, to ignore irrelevant matters and to reach a conclusion without a bias, without predilection and without prejudice. The satisfaction contemplated by Section 326 must, therefore, be the result of an objective appraisal of the relevant materials. Because such a provision imposed restriction upon the power of the companies and individuals to carry on business, the order made by the Central Government u/s 326 would result in serious detriment of the company and the proposed managing agent, but in the larger public interest if it was valid, they had to suffer it. Such a power conferred on the Central Government was restrictive of valuable rights of the company and of the proposed managing agent, and severely restricts the liberty of contract. Therefore, as per the settled legal position this approval function is not a mere administrative function but the

power has to be objectively exercised considering all the relevant material. The fact still remains that this is a management function, howsoever serious be the restraint it imposes on the power of the management to terminate the services of the employees employed by the school.

10. The other controversy raised is as to the period of 45 days because u/s 36(2) the officer referred to in Section 36(1)(b) is required to communicate his decision within a period of forty-five days from the date of receipt by him of the proposal and if such decision is not communicated to the manager within the said period, the action proposed to be taken under the said Clause (b) shall be deemed to have been approved by the said officer. The term "communicate" would have of course two ordinary literal meanings, both of transmission by the authorised officer and receipt by the management. In *Banarasi Devi Vs. Income Tax Officer, Calcutta*, , a similar controversy as regards the expression "issuing of a notice" had been considered by their Lordships because that expression also could have both the meanings, of mere sending and actual serving, and their Lordships held that only that meaning must be given which earned out the intention of the legislature and fitted into the context or the setting in which it appeared. In the present case the scheme of this deemed fiction in Section 36(2) is of the same nature as Section 65 of the Bombay Land Revenue Code where also the said deemed fiction of a deemed permission for N.A. use is created by the legislature. In *Shivpal Singh v. Secretary of State* 26 Bom. L.R. 371 at page 374, their Lordships clearly held that the time-limit had been set out by the legislature for reaching a decision after due enquiry. Therefore, if there was no order after due enquiry within three months, further proceedings of the Collector would be defective and must be taken to have been entirely beyond" his powers. In *The State of Gujarat Vs. Patil Raghav Natha and Others*, , interpreting this identical provision in Section 65 their Lordships pointed out that u/s 65 of the Code if the Collector did not inform the applicant of his decision on the application within a period of three months, the permission applied for shall be deemed to have been granted This section showed that a period of three months was considered ample for the Collector to make up his mind and beyond that the legislature thought that the matter was so urgent that permission shall be deemed to have been granted. Their Lordships also insisted upon a reasoned order in such cases. The same would be true even under the present scheme where legislature must be deemed to have treated the matter as so urgent that approval in the form of previous permission is deemed to be granted to the management, if the authorised officer does not communicate his decision within this 45 days" period from the date of the receipt of the proposal by him. He must also hold an enquiry and communicate his reasoned decision within this statutory period. As this is the period provided by the legislature for the operation of this fiction, there must be an element of certainty of the period of 45 days. One terminal is already fixed of the receipt of the proposal and the other terminal must also be fixed viz of the communication of the order by sending this order to the management" irrespective of the fact when it actually reaches the management Any other

interpretation would curtail this 45 days" period which the legislature has advisedly allowed to this authorised officer and an element of uncertainty shall be introduced because of the time taken for dispatch by reason of postal delay or otherwise. This fiction of the legislature reveals the whole object of this provision that the enquiry which this authorised officer must make for granting his previous approval must be finished up within this 45 days" period as the matter is considered of that urgent nature and as the management has to shoulder the responsibility of continuing the concerned employee in service during this period. The legislature having achieved a just balance between the conflicting interests of the management and the concerned teacher, and the expeditious disposal of this approval action being the true object of this provision, the legislative fiction must be given its full play and effect. Such a provision would not be capable of any waiver by the management because on the expiry of statutory period of 45 days fiction would operate by its own force. No doctrine of waiver could be invoked against statutory provision. Therefore, merely because the management participated in the further enquiry or it seeks to avoid the enquiry by prolonging the same; this statutory period cannot be extended. There is also ample evidence in this relevant statutory scheme which leaves no doubt that the approval function is only of a limited enquiry because the final dispute on merits would still be raised and decided u/s 38(1) when actual termination takes place where a very wide jurisdiction, even wider than the newly enacted Section 11A of the Industrial Disputes Act, 1947 has been provided. Therefore, this limited enquiry must be held to be a restricted summary enquiry where the doctrine of management function must apply not only before the authorised officer but also before the Tribunal while exercising the appellate jurisdiction of a limited nature only against the order sought to be passed u/s 36 (1)(b) as to whether that fetter on the management's right to fire an employee should be removed or not. The whole scheme, as earlier pointed, is a complete, exhaustive scheme providing for the special rights and this efficacious remedy to help the weaker section of the teachers by imposing this fetter on the management so that until this bar was removed by independent application of mind by the authorised officer of the Board, the employee continued in service. Time-limit has been set up to ensure expeditious disposal and not with the object as urged by Mr. Mehta to enable an employee to continue in service and to fight till the entire dispute was finally decided on merits by the Tribunal even as to whether the discharge was wrongful, unlawful and unjustified or not. A bare comparison of Section 36(2) and Section 36(3) would bring out the true import of this provision. So far as termination of service is concerned, the deemed fiction u/s 36(2) is that if authorised officer fails to communicate his decision within the prescribed 45 days" period to the manager, the action proposed shall be deemed to have been approved. u/s 36(3) in the context of suspension pending enquiry, failure to communicate ratification of such suspension by the authorised officer within the period of 45 days would result in the suspension ceasing to have any effect on the expiry of such period. In case of action of termination of service previous permission was contemplated and subsequent ratification is contemplated in

suspension pending enquiry, but in both the cases the deemed position comes into operation on the expiry of this 45 days" statutory period from the date of the receipt of the concerned proposal or action of suspension. In case of suspension, such suspension ceases to have effect on the expiry of 45 days" period and thereafter no further appeal is provided, because Section 36(5) is limited to orders of approval u/s 36(1)(b) alone. An identical scheme must have a similar interpretation in both these cases and, therefore, the fiction must have full statutory operation and there would be no question of any waiver or any extension or enlargement of the statutory period by unilateral action of the authorised officer or even by any waiver or consent.

11. The concerned employee also would not be in any manner prejudiced because he can raise a final dispute on merits after actual termination took place. It may be that even after the deemed approval the management may change its mind. New cause of action would arise only when actual termination of service takes place and then the Tribunal would have wide jurisdiction to decide that dispute in its original jurisdiction u/s 38 read with Section 39.

12. One other important factor to be kept in mind is that the authorised officer is not given any power to compel attendance of witnesses or to examine any person on oath and the absence of such powers of Civil Court by a provision similar to Section 39(6) in the context of this authorised officer would show that the nature of the enquiry before him while exercising approval function is of a summary nature, and it could not be full witness action or enquiry on merits which the Tribunal would undertake while deciding the final dispute on merits in its original jurisdiction. It is settled principle that the appellate body would also be exercising the same jurisdiction as the original authority and, therefore, while exercising appellate jurisdiction u/s 39(5), the Tribunal also would have the same limited jurisdiction which the authorised officer possessed.

13. Even the whole context or setting of this provision is of a management function because the approval is in the shape of previous approval and the management's termination action is at this stage in the form of proposal. That itself is a salutary clue to the present question that the approval function also must be looked upon on the doctrine of management function. Mr. Mehta, of-course, sought inspiration from the various powers of the Board u/s 17 and the wide nature of the Board's control, which we have pointed out at the outset. Howsoever wide may be the nature of these restrictions on the managements, and howsoever wide be the control exercised by the Board, the management is not still completely displaced, as contended by Mr. Mehta. Therefore, we cannot agree with Mr. Mehta that the doctrine of a management function could not apply and the analogy of Section 33A enquiry which limited the scope of such enquiry was misconceived. In *The Punjab National Bank Ltd. Vs. Its Workmen*, , while considering the relevant scheme of such restrictions in the context of Sections 33, 33A and 10 of the Industrial Disputes Act, their Lordships pointed out that the ban imposed by this provision of Section 33 was mandatory and its

contravention was punishable u/s 31. However, when such application was made by the employer for requisite permission u/s 33 the jurisdiction of the Tribunal in dealing with such an application was limited. It had to consider whether prima facie case had been made out by the employer for the dismissal of the employee in question. If the employer had held a proper enquiry into the alleged misconduct of the employee, and if it does not appear that the proposed dismissal of the employee amounts to victimisation or unfair labour practice, the Tribunal has to limit its enquiry only to the question as to whether a prima facie case had been made out or not. In these proceedings it is not open to a Tribunal to consider whether the order proposed to be passed by the employer is proper or adequate or whether it errs on the side of excessive severity; nor can the Tribunal grant permission, subject to certain conditions, which it might deem to be fair. It had only to consider the prima facie aspect of the matter and then grant permission or refuse to grant it. Their Lordships took care to point out that even if requisite permission was granted to the employer u/s 33, that would not be the end of the matter. It was not as if the permission granted u/s 33 validated the order of dismissal. It merely removed the ban, and often was challenged by the union of the employees by raising an industrial dispute in that behalf. Their Lordships refused to treat the matter on any technical approach as in the case of Government servants. In the context of private employments it was held that the removal of the ban merely enabled the employer to make an order of dismissal and thus avoid incurring the penalty imposed by Section 31(1). If, however, an industrial dispute was raised on the ground of dismissal and it was referred to the Tribunal for adjudication even though requisite permission was obtained u/s 33, it had to face scrutiny of the Tribunal. That decision was as per the settled legal position in a series of decisions as pointed out by their Lordships. Further proceeding at page 171 it was pointed that in cases where an industrial dispute was raised on the ground of dismissal, the Tribunal's jurisdiction as per the settled decisions was a limited jurisdiction, by invoking limitations as laid down in *Indian Iron and Steel Co., Ltd. and Another Vs. Their Workmen*, . The powers of the Tribunal to interfere with cases of dismissal were not unlimited because the Tribunal did not act as a Court of appeal and substituted its own judgment for that of the management. Under the industrial law it had been laid down that the classes of cases in which the Tribunal would be justified in interfering with the order of dismissal would be those where on the material, the finding of the management was completely baseless or perverse. This position held good till this fetter even on the Industrial Tribunal was removed when Section 11A was introduced in the Industrial Disputes Act. The change introduced by the legislature by enactment of the new section 11A has been duly considered in *The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others*, their Lordships pointed out that the words "in the course of adjudication proceeding, the Tribunal is satisfied that the order of discharge or dismissal was not justified" clearly indicated that the Tribunal was clothed with the power to reappraise the evidence in the domestic enquiry and satisfy itself whether the said evidence relied on by the employer established the

misconduct alleged against a workman. What was originally a plausible conclusion that could be drawn by an employer from the evidence, had now given place to a satisfaction being arrived at by the Tribunal that the finding of misconduct was correct. The limitations imposed on the powers of the Tribunal by the decision in *Indian Iron and Steel Co., Ltd. and Another Vs. Their Workmen*, case could no longer be invoked by an employer, because the Tribunal was at liberty to consider not only whether the finding of misconduct recorded by an employer was correct; but also to differ from the said finding if a proper case was made out. What was once largely in the realm of the satisfaction of the employer, had ceased to be so and now it was the satisfaction of the Tribunal that finally decided the matter. Further proceeding at page 1241 Their Lordships pointed out that the jurisdiction of the Tribunal to reappraise the evidence and to come to its own conclusion endures to it upon the dispute referred to it and the Tribunal may hold that the misconduct is not proved or that the misconduct proved does not warrant punishment of dismissal or discharge. Under the new Section 11A even though the Tribunal may hold that the misconduct is proved, it may be of the opinion that the order of discharge or dismissal for the said misconduct was not justified. In other words, the Tribunal may hold that the proved misconduct did not merit punishment by way of discharge or dismissal. It could under such circumstances award to workman only lesser punishment instead. The power to interfere with the punishment and alter the same was now conferred on the Tribunal because of the wide jurisdiction to hold discharge or dismissal as unjustified. It is true that the proviso u/s 11A restricted the Tribunal's power to the material on record by way of evidence taken by the management at the enquiry or evidence led before the Tribunal. Even such a restrictive proviso does not appear in our scheme and Section 39(9) gives the widest jurisdiction to the Tribunal to decide a dispute after the termination takes place on merits by finding out whether such a termination was wrong or unlawful or otherwise unjustified and by directing reinstatement in service. Section 39(9) further provides that such a direction shall be complied with by the manager on pain of penalty provided in Section 42 where on conviction a fine to the extent of Rs. 100 to Rs. 1000 can be imposed, and such direction being of continuing nature, unless it is fully complied with, the management would be punished for such continuing wrong and would be under the continuous pain of penalty. Therefore, for this new cheap and effective remedy in super session of the jurisdiction of the Civil Courts provided to this poorly paid weak section of the teachers when guaranteeing the tenure of service under our scheme, the Tribunal has been given such wide jurisdiction to take evidence and come to its own conclusion on merits of the dispute, exercising all the powers of the Civil Court u/s 39(6) as supplemented by the other procedural provisions of Civil Procedure Code. The enquiry at this later stage is full enquiry on merits so that a just order can be passed looking to the four-fold interests involved in this controversy of the teachers, the management, the student community and also the larger public interest of this academic field as represented by the Board or the Education Department. That however is to be done when a final dispute is to be resolved on

merits. That jurisdiction could not be exercised at the initial stage of approval where only a limited jurisdiction is even of the authorised officer, and the Tribunal is given only the same limited appellate jurisdiction against that order alone u/s 36(5). In *The Chairman, Brooke Bond India Private Ltd. and Another Vs. Chandranath Choudhary*, , their Lordships had to consider the scope of a provision in Section 26 of the Bihar Shops and Establishments Act when it was sought to be compared with Section 33A of the I.D. Act. Their Lordships pointed out that the purpose of the two sections was so different as there could be no comparison between them. The language of Section 26 clearly established that when a complaint was filed on any one of the two grounds set out in Sub-section (2), the procedure laid down in Sub-section (5) would apply and the competent authority was entitled to record evidence and come to its findings on such evidence. The authority thus was required to come to its own findings on the evidence adduced by the parties and recorded by it independently of the findings given in the domestic inquiry. This was also clear from Sub-section (2) where under an employee had a right to show that there was no reasonable cause for dispensing with his services or that he was not guilty of the misconduct for which he was charged and held guilty in a domestic enquiry. Their Lordships made the pertinent observation that the proceedings u/s 26 were not by way of appeal against the order passed at or as a result of the domestic enquiry; they were independent and original proceedings where the competent authority had to arrive at its own findings on appreciation of evidence led before it and not on evidence adduced in the domestic enquiry. That being so, it would not be held that the competent authority u/s 26 had a limited jurisdiction as in cases falling u/s 33A of the Industrial Disputes Act.

14. In view of this settled legal position of the interpretation of the analogous schemes, it is obvious that the two provisions can be harmonised only in the manner have done by holding that at the approval stage *prima facie* case has to be seen and the enquiry would be a limited enquiry and not a full enquiry on merits. It is only when a dispute is raised after termination that the wide jurisdiction of the Tribunal is attracted to decide whether the termination of service is wrong, unlawful or not justified and where a full inquiry even by appreciating evidence unrestricted by any management function doctrine is permissible for the Tribunal which can even modify the punishment. The whole jurisdiction of the Tribunal is to pass a just order bearing in mind the four-fold interests involved in the dispute. Therefore, such a just order of reinstatement with back wages would necessarily imply power in the Tribunal to apportion the compensation amount. Whenever compensation is to be apportioned the settled legal position is that the apportionment is by taking into account the blameworthiness. The Tribunal is given jurisdiction to pass a just order in the larger interests so that justice is done both to the management and the teacher concerned and the educational interests prosper. When the order of back wages has to be passed in such grant-in-aid schools, the entire salary of the teachers being paid from the public grant, the burden must be justly apportioned. The

Tribunal would have to see that the guilty party bears the burden of such back wages. Therefore, the school management can be made personally responsible by the Tribunal by exercising a just discretion when justice can be done only in that manner as for wrongs or perversity or mala fides of the management which takes action in absence of any prima facie case, the public should never be made responsible to bear this burden of the back wages. That would be paying premium to the arbitrary, highhanded and mala fide conduct of the management. The very distinction which we have made between the limited scope of the enquiry on the doctrine of management function and the full inquiry on merits after re appreciation of the entire evidence by passing a just order even when misconduct is proved or by interfering with the punishment at the final stage when a dispute has arisen in regard to termination of service would show that when the management acts arbitrarily in a highhanded manner by way of victimisation or in a perverse way or passes punishment which is out of all proportion to the blameworthy conduct or acts in contravention of the principles of natural justice or without holding a fair enquiry as required by law or flouting the fetter of previous approval, such action would justify the Tribunal apportioning the blame by suitably modifying the direction about the back wages so that the management might have to pay personally in fit cases. Even in order to save a hard-hit, ill-fated poor teacher from suffering further starvation because of the weak finances of the management, the Tribunal may have to give suitable direction by requiring the educational authorities to make payment to the teachers directly from the grant. Therefore, the legislature has advisedly invested the Tribunal with a very wide jurisdiction to do complete justice in the matter by enabling the teacher to have recourse to this efficacious, adequate, cheap remedy in super session of the ordinary Courts of the land so that they would have a proper security of tenure and arbitrary right of firing a teacher by the management would be effectively checked from being abused so as to sub serve the larger public interest. The Tribunal would, therefore, have to give just directions for such back wages at the time of reinstatement keeping in mind the facts and circumstances of each case so that real and complete justice is done bearing in mind these guidelines so that this wide power is exercised in public interest to guarantee security of tenure to the weak, hard-hit teachers while granting this cheap efficacious relief under Sections 38 and 39. If the matter is looked at from this angle, both the provisions in Sections 36 and 38 would be properly harmonised and there would be no duplication and overlapping and this interpretation would completely fit in the context and setting of this whole scheme and give full effect to the intention of the legislature to remedy the situation which had arisen from the teachers' conditions being previously regulated only under the administrative instructions issued under the grant-in-aid Code. The appellate decision also would be final but only to that limited extent as the finality is for that different purpose only at that stage when fetter is operating only on the management function, and such a decision would not be final so as to exclude full enquiry on merits after the service is actually terminated so that justice would be done to the teacher as aforesaid.

15. The last consideration which was urged by Mr. Mehta on the score of hardship would hardly present any difficulty because if actually the Tribunal has exercised the appellate jurisdiction after the services have been terminated of the concerned teacher, the jurisdiction which is really and substantially exercised to decide such a dispute on merits is the original jurisdiction u/s 33 and not the appellate jurisdiction u/s 36(5). Therefore, such an appeal could equally be treated as an original dispute properly raised by the concerned teacher u/s 38. The award of such a Tribunal would not be considered from mere technicalities but would have to be considered by looking to the substance of the matter rather than mere form. Once we have held that the two jurisdictions operate at two different stages, one before the termination and the other after termination, there would be no overlapping even in this matter of termination of service keeping in mind these two safeguards. Therefore, there would be no question of any hardship on the interpretation, which we have put on this salutary scheme.

16. Then only one further question which would arise for our consideration is how far in the writ jurisdiction the order of the Tribunal can be interfered with. That position is completely well settled after the decision in *State of Andhra Pradesh and Others Vs. Chitra Venkata Rao*, , their lordships pointed out that the jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction and the Court which exercises is not an appellate Court. The findings of fact reached by an inferior Court or Tribunal as a result of the appreciation of evidence are not reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact; however, grave it might appear to be. In regard to a finding of fact recorded by a Tribunal, a writ can be issued if it is shown that in recording the said finding the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Again if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. A finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant and material evidence adduced before the Tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said findings are within the exclusive jurisdiction of the Tribunal. (See *Syed Yakoob Vs. K.S. Radhakrishnan and Others*, In view of the aforesaid settled position we would now answer the points raised in the first petition.

17. In the first petition, on the points raised by Mr. Patel we must hold that the fiction in Section 36(2) must clearly apply as 45 days had admittedly expired from the receipt of the proposal and the authorised officer had failed to communicate his decision. There was no question of any waiver or extension by the participation of the management in the further inquiry or because of a letter written by the authorised officer that he was holding further inquiry. Therefore, the decision which was first communicated by transmitting the same to the manager of the school on June 13, 1975, after 45 days from the receipt to the

proposal on April 16, 1975, was clearly without jurisdiction as by reason of the aforesaid statutory fiction the approval must be deemed to have been granted. Therefore, the appeal filed by the management was completely instructions and it should have been accordingly disposed of by the Tribunal. However, the Tribunal's wide jurisdiction to decide the dispute on merits still remained unaffected inspite of the deemed approval u/s 36(2), and such an award of the Tribunal as per the settled legal position could not be challenged before this Court by asking this Court to re appreciate the evidence when the finding of fact is admittedly not challenged as perverse. Therefore, no ground whatever has been made out by Mr. Patel, which would justify any interference in the first petition with the just order of the Tribunal. Therefore, the first petition must clearly fail and the rule is discharged. The respondent-teacher alone shall get the costs from the petitioner. No order as to the costs of the other respondents.

18. In the companion matter, the head master manager M.P. Jain has filed this petition challenging the order of the Tribunal, dated March 4, 1976 by which the Tribunal allowed both the original application and the appeal filed by the management. The order passed by the petitioner head master terminating the services of the respondent No. 1 teacher was declared invalid and inoperative and this teacher was declared to be continuing in service and was held to be entitled to receive his back wages. However, as he was held to have committed a minor act of insubordination, the Tribunal had suitably modified the order of punishment in its discretion by only stopping one increment for a period of two years. As the concerned head master had roughly handled the teacher Shri Doshi and had rudely behaved with him in the class room, which had resulted in the protest by the teachers and the students against this highhanded action of this petitioner, and as the school management had taken this high-handed action against the concerned teacher where the punishment was out of all proportion not only reinstatement was ordered but in view of the further fact that the management had even not complied with the stay order granted by the Tribunal on June 16, 1975 and merely paid idle wages to the teacher without taking any work from him, in view of the blameworthy conduct of the management, the Tribunal had exercised its just discretion and ordered the manager to shoulder the burden of all the salary paid to respondent No. 1 teacher from June 15, 1975 till the date of the order. The D.E.O. was accordingly directed to do needful in the matter. The management was further directed not only to reinstate this employee in service forthwith but also not to prevent him from actually discharging his duties in the school. So far as the dispute with the concerned teacher is concerned, the petitioner has filed a Purshis in this Court on July 2, 1976 to the following effect:

Respondent No.] employee in this petition states that he will not insist upon getting any additional pay of Rs. 50/ over and above his legal pay scale which was being given to him at the time of his appointment and which was stopped subsequently and thereupon the petitioner does not press the petition so far as the employee respondent No. 1 is concerned and the petition against that

respondent therefore is disposed off as far as respondent No. 1 is concerned.

19. The concerned teacher and the petitioner have signed this Purshis. Therefore, the petition stands withdrawn so far as the concerned employee is concerned as the management is satisfied with the order which has been passed against the management to reinstate this teacher with back wages with further directions as aforesaid.

20. Mr. Vyas however vehemently challenged the ultimate direction of the Tribunal by which the burden of the salary from June 16, 1975 till March 4, 1976 was thrown on this petitioner head master. This is a complete misconception of the true nature of this direction. The head master is not personally asked to shoulder this responsibility but it is really in his capacity as the manager that the management has been asked to bear this due share of the blame. As earlier pointed out the Tribunal could give such a just direction for apportioning the blameworthy conduct of the management which was so eloquent in this case that the Tribunal was wholly justified in giving this just direction keeping in mind the facts and circumstances of the case. The Tribunal had gone into the entire background of the case as to how the high-handed rough handling of this petitioner head master of the other teacher Shri Doshi in the classroom itself had led to such serious protest by all the teachers and students concerned. If the head master behaves in this manner, the protesting teachers could not be penalised under the pretext of such insubordination or instigation of the students. Much was sought to be made by Mr. Vyas as to the further ground advanced that the teacher had a cycle shop run by the servant in the name of the son. The real action having been based on the other misconduct, which never justified the aforesaid punishment, the Tribunal had exercised just discretion keeping in mind the entire background and facts and circumstances of the case. In any event when the management had not pressed the petition against the concerned teacher and had been satisfied with the reinstatement order of the Tribunal, the management could hardly reopen this question before this Court. Mr. Vyas vehemently argued that this is a penalty order for which no show cause notice was specifically given. When the Tribunal decides a dispute about the termination of service being wrong, unlawful or not justified and it gives relief about reinstatement with back wages determining the blameworthy conduct of the management so as to apportion the blame, the management had full opportunity to put its entire case by pointing out all the facts and circumstances which should be taken into account by the Tribunal to exercise just discretion, and so, no other notice was necessary under the law for passing this incidental, consequential order apportioning the blame in the matter of back wages. Mr. Vyas next argued that in this case also the proposal had been received by the authorised officer of the Board on April 9, 1975 and the D.E.O. had actually put the order in communication only on June 10, 1975, and therefore 45 days' statutory period having expired, the permission was deemed to have been granted even in this case. Therefore, even though the management had received the order on June 10, 1975, and filed appeal on June 16, 1975, this was also a

case of deemed approval and so the appeal had become in fructuous. These facts could not help Mr. Vyas for the simple reason that the management never cared to wait for the statutory period and had dismissed the teacher on May 26, 1975, and even when the Tribunal gave a stay order on June 16, 1975, and gave proper interim relief to the teachers, the management flouted the said order and adopted the ruse of paying only idle wages. Therefore, the conduct of the management was wholly arbitrary and high-handed and this was a fit case where discretion was duly exercised by the Tribunal by asking the management to shoulder this small share of the blame by paying just back wages for the period from June 16, 1975 to March 4, 1976. Therefore, in this petition also no ground is made out to justify any interference with the just order of the Tribunal. Therefore, this petition also fails and the rule is discharged with do order as to costs in the circumstances of the case.