

(2012) 12 PAT CK 0046
In the Patna High Court
Case No : CWJC No. 4953 of 2010

Smt. Asha Shrivastava

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 19-12-2012

Acts Referred:

Constitution of India, 1950 — Article 12, 226, 29, 30
Penal Code, 1860 (IPC) — Section 202, 406, 408, 420

Citation : (2013) LabIC 1073 : (2013) 1 PLJR 648

Hon'ble Judges : Mihir Kr. Jha, J

Bench : Single Bench

Advocate : Y.V. Giri, for the Appellant; Sanjay Pandey for the BPSC and Mr. Mahesh Narain Parbat for the Resp. Nos. 5, 6 and 7, for the Respondent

Final Decision : Dismissed

Judgement

Mihir Kr. Jha, J.—Heard Mr. Y.V. Giri, learned Senior Counsel for the petitioner, learned AAG-1 for the State, Mr. Sanjay Pandey, learned counsel for the Bihar Public Service Commission and Mr. Mahesh Narain Parbat, learned counsel for the respondent nos. 5, 6 & 7. In this writ application, the petitioner has prayed for the following relief:--

1.(i) For quashing the dismissal letter no. 10/10 dt. 30.1.2010 (Annexure-26) by which petitioner has been dismissed from service without having been taken in terms of the Service Conditions as mentioned in the bye-laws of the Controlling Association Respondent No. 6 and as such the same is illegal, arbitrary and mala fide.

(ii) For issuance of a writ of mandamus Commanding Official respondents to take legal steps and prohibit the order of dismissal to be taken effect.

(iii) For giving a direction to not give approval of so-called dismissal of order passed by the respondent no. 6.

(iv) For giving a direction to reinstate the petitioner with immediate effect and to

pay all her dues of suspension period including the subsistence allowance and payment of salary.

2. In order to appreciate the issue impugned in this writ application, it would be also useful to quote the impugned order passed against the petitioner dismissing her from service as contained in Annexure-26, which reads as follows:--

3. Mr. Giri, learned Senior Counsel for the petitioner, in support of the aforementioned prayer, has submitted that the petitioner was duly appointed as the Headmistress of Sahu Jain Balika Uchcha Vidyalaya, Mirganj (Gopalganj) (hereinafter to be referred to as "the school"). He has also clarified that when the school which has been declared as a minority school by the State Government and is receiving aid from the State Government, it has to be governed by the provisions of Bihar Non-Government Secondary School (Taking over of Management and Control) Act, 1981 (hereinafter to be referred to as "the Act"). He has also referred to the pleadings to show that the petitioner was initially appointed as an Assistant Teacher of the School on 25.6.1973 and her services were approved and confirmed by the Bihar Secondary Education Board by an order of the Secretary of the Board dated 14.6.1980 with effect from 9.1.1978. According to Mr. Giri, the petitioner was later on appointed as Headmistress on 11.9.2002 and her such appointment on the post of Headmistress was also confirmed by a decision of the Managing Committee dated 13.9.2004. By referring to the letter dated 26.6.2006 of the District Education Officer, Gopalganj, he has submitted that the matter relating to the approval/concurrence of the appointment of the petitioner on the post of Headmistress of the School has been referred to the Bihar Public Service Commission but the Commission by its letter dated 22.4.2008 had sent back such proposal to the Director, Secondary Education for taking a decision in the matter of concurrence/approval to the appointment of the petitioner to the post of Headmistress.

4. According to Mr. Giri in the year 2007 the 12th Finance Commission allocated a sum of Rs. 13.5 Lacs for the development of school but the management of the school wanted this amount to be used in a different manner and when the petitioner under the instruction of the District Education Officer, Gopalganj had resisted such action of the management of the school, she was subjected to her order of unceremonious removal from the post of Headmistress. In this regard, he has referred to the pleadings in paragraph nos. 14 to 49 only to show that it was on account of mala fide of the respondent nos. 5 & 6 that when the petitioner did not allow th(sic) to use the Government fund meant for building and furniture of the school for its misutilized for their personal gains that she was initially suspended and later on dismissed from service by the aforesaid impugned order dated 30.1.2010. In this regard, he has invited attention of this Court to the pleadings in paragraph no. 50 containing the facts and the grounds relating to the impugned order of dismissal being bad, which reads as follows:--

50. That the order impugned as mentioned above is not sustainable and is fit to be quashed by this Hon''ble court on the following grounds:--

(A) That the order impugned is in violation of principle of natural justice and fair play the petitioner was not given any adequate opportunity to defend her allegation, and the whole enquiry has been conducted without supplying him and memo of charges or the documents asked by her.

(B) That non-supply of documents and memo of charges vitiates the whole enquiry.

(C) That for awarding major punishment like dismissal there must be a proceeding by giving adequate opportunity to the petitioner after supplying him memo of charges, but in the present case, no any proceeding has been initiated and no memo of charges has ever been served to the petitioner, which is violation of cardinal principle of service law, and thus the impugned order collapses on this legal aspect.

(D) That the order impugned has been passed in violation of Section 18(3)(Gh) Chapter-5 of the circulars of Minority and Public High School, as no approval from the Vidyalaya Seva Board how Staff Selection Commission has been taken before issuance of order impugned.

(E) That the order impugned is in violation of bye-laws and regulations of the Association of the respondent no. 6 mentioned in paras (vi) and (vii) of the service conditions.

(F) That the enquiry report is also vitiated in law as the same has been conducted by the persons and employees of the same school who are employees of respondent no. 6 and they were directed by respondent no. 6 to act as per his will, and the request made by the petitioner to conduct enquiry by the staff of the State Govt. which was not considered.

(G) That the respondent no. 6 had made up his mind before the enquiry to dismiss the petitioner from service, which is very much apparent from the letter no. 65 dt. 16.6.09 and the enquiry was mere a formality to cover up the legal lacuna and on this ground the whole enquiry is vitiated in law and the order impugned cannot sustain.

(H) That the report of the District Education Officer dt. 18.12.2009 also made it clear that enquiry done back behind the petitioner is illegal, arbitrary and mala fide, and the same is fit to be not accepted.

(I) That all the charges mentioned in the enquiry report is based on documentary evidence, but no documents has ever been brought on record, or supplied to the petition to substantiate the charges.

(J) That according to bye-law and regulation as incorporated in duties of the Headmaster the headmaster is competent to spend the sanctioned allotments for prize, library books and contingencies, and the same has been not ever considered or taken into account before proceeded against the petitioner.

(K) That the letter no. 71 dated 3.7.09 written by the respondent no. 6 to the

respondent no. 2 in responding the query with regard to revocation of suspension of the petitioner, also proves that the petitioner has been made victim not for the charges as alleged in the enquiry reports, but for not obeying to do the others nefarious activities by dictate of the mens of the respondent no. 6.

5. Mr. Giri, having referred to the aforementioned pleadings, has submitted that the impugned order dismissing the petitioner from the post of Headmistress of the School is basically unsustainable as it is in violation of Sections 18(3)(c) & (d) of the Act. In this regard, he has also placed reliance on the judgment of the Apex Court in the case of All Bihar Christian Schools Association and Another Vs. State of Bihar and Others, . He has also submitted that Clause (vii) of the service bye-law of the school which envisages the procedure of approval of the decision of the dismissal/removal of the Headmaster by the Competent Body and organization has also not been followed in the case of the petitioner.

6. As with regard to the allegation on which the petitioner was sought to be removed, he has highlighted that on similar set of allegations, a First Information Report was lodged against the petitioner bearing Mirganj P.S. Case No. 30 of 2010 under Sections 420 /406 /408 of the Indian Penal Code and the police after investigation the said case had submitted a final form in favour of the petitioner declaring the case to be a mistake of fact and such police report was also accepted by the Chief Judicial Magistrate, Gopalganj by his order dated 25.10.2011. Thus, according to Mr. Giri on the same set of allegation, when the criminal case against the petitioner had failed, there was no justification for dismissing the petitioner on identical charge.

7. In this case, a counter affidavit has been filed on behalf of the respondent no. 2 sworn by the District Education Officer, Gopalganj wherein it has been stated that since the petitioner is a Headmistress of a minority school and is governed by the decision of the Managing Committee, the State and its functionaries have no much role to play.

8. It is, however, in the counter affidavit of the respondent nos. 5 to 7 that the whole issue has been explained. A preliminary objection has also been raised therein that the relief in this writ application sought by the petitioner is basically against the Managing Committee of the School and as such is not maintainable. Apart from the maintainability of the writ application, it has been explained that the petitioner was appointed only as an In-charge Headmistress on 11.9.2002 and subsequently she was promoted as Headmistress of the School under the decision of the Managing Committee dated 13.9.2004. In paragraph nos. 10 to 14, the respondent nos. 5 to 7 have explained the misconduct on the part of the petitioner as with regard to the embezzlement of the funds, which were placed at her disposal for construction of building of the school and it has been alleged that she had spent the amount of Government grant as per her own sweet will without obtaining any approval of the Management and in fact, contrary to its direction which by itself amounted to gross indiscipline on the part of the

petitioner.

9. In the said counter affidavit, respondent nos. 5 to 7 have also explained that the petitioner was suspended on definite charge of misconduct, whereafter, she had avoided handing over of the charge of the post of Headmistress to the new incumbent. It has also been alleged that the petitioner did not report at her Headquarter fixed during the period of suspension. Adverting to the allegation of non-compliance of the principle of natural justice in course of enquiry, it has been stated in paragraph no. 16 of the counter affidavit that the petitioner did not appear on 28.7.2008, the date of enquiry despite information given to her by a notice dated 21.7.2008. It has also been explained that due to non-cooperation attitude of the petitioner, an ex-parte enquiry was held and the Enquiry Committee, after examining various documents and records, had submitted its detailed report on 19.1.2009 holding the petitioner guilty of the charges of misconduct leveled against her. In paragraph no. 17 of the counter affidavit, it has also been claimed that the copy of the enquiry report dated 19.1.2009 was served on her asking her to file her show-cause reply and the petitioner had filed her such show-cause reply on 4.4.2009, whereafter, another opportunity was given to her by a letter of respondent no. 6 dated 16.6.2009 for filing her show-cause reply and the petitioner on receipt of the said letter dated 16.6.2009 had also submitted her reply on 22.7.2009 whereafter the matter was placed before the Managing Committee which, having found the reply and explanation of the petitioner to incomplete and unsatisfactory, had decided to serve a second show-cause notice before passing the order of punishment vide letter no. 112 dated 11.11.2009. It has been claimed by the respondents that as the petitioner did not submit any reply to the second show-cause notice, the matter, thereafter, was once again considered by the Managing Committee, which having found the charge against the petitioner to be proved, had passed the impugned order of punishment of her dismissal from service on 30.1.2010.

10. A supplementary counter affidavit has been filed by the respondent no. 5 to 7, in which the respondents have brought on record the copy of the letter dated 30.1.2010 which, according to the Secretary of the Managing Committee, was also sent to the District Inspector of the School, Gopalganj, District Education Officer, Gopalganj, Director, Secondary Education, Principal Secretary, Human Resources Development Department, Secretary, Bihar Public Service Commission and Secretary, Bihar School Examination Board but none of the aforementioned officials had responded to the decision of the dismissal of the petitioner which, in effect, would mean that the decision of the Managing Committee had stood approved.

11. A reply to the counter affidavit of the respondent nos. 5 to 7 has also been filed by the petitioner wherein more or less the facts mentioned in the writ application have been reiterated and by enclosing the documents relating to the criminal case, it has been sought to be impressed that if on the same charge, the criminal case could not be sustained against the petitioner, there was no

rationale or justification for dismissing the petitioner on an identical charge.

12. It has also to be noted here that a second supplementary counter affidavit has been filed on behalf of the respondent nos. 5 to 7 wherein it has been stated that the letter dated 24.4.2010 of the District Education Officer, Gopalganj was never received by the Managing Committee of the School and thus, the author of the letter, the District Education Officer, Gopalganj appeared to be in collusion with the petitioner. In this regard, it has also been pointed out that earlier also, the District Education Officer, by issuing a letter dated 28.10.2009 had sought to be depute the petitioner in Islamiya Urdu Academy, Mirganj which was a wholly unauthorized act keeping in view that the petitioner was the employee of a minority school whose services could not have been transferred or deputed to any other minority school. As with regard to the closure of the police case against the petitioner and submission of final form, it has been stated that the police was in collusion with the petitioner and the Managing Committee has also (sic)ed a protest petition, whereafter, the case is still pending on the basis of protest petition and the enquiry u/s 202 is going on.

13. The petitioner had also filed a reply to the second supplementary counter affidavit, wherein, apart from other facts it has been stated that the approval of the Vidyalaya Seva Board in terms of Section 18(3) of the 1981 Act has not been obtained as yet.

14. In the background of the aforementioned fact, the first and foremost issue would be as to whether the present writ application directed against the order passed by the Managing Committee of a Minority School is maintainable?

15. Learned counsel for the petitioner, however, in this regard has stated that the school is discharging a public function by way of imparting education to students and its subject to the rules and regulations as explained at length in the writ application, the employment in such schools is thus not devoid of any public character. In this background, Mr. Giri has placed reliance also on the judgment of the Apex Court in the case of *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, , as also the Division Bench judgment of this Court in the case of *Mubarak Hussain Vs. State of Bihar and others*, , wherein according to Mr. Giri, it has been held that minority recognized institutions performing the statutory duty is "State" within the meaning of Article 12 and amenable to the writ jurisdiction. An alternative argument has also been made by Mr. Giri that assuming that the writ is not maintainable against the respondents Managing Committee and its office bearers, this Court, in exercise of power under Article 226, can issue an appropriate order to any authority who need not be "State" within the meaning of Article 12 of the Constitution and may cover any other person or body performing public duty like the school.

16. Mr. M.N. Parbat, learned counsel for the Managing Committee, had reiterated his submission as with regard to the non-maintainability of the writ application,

inasmuch as, the school is being run by private Managing Committee and in this regard, he has placed reliance on a Full Bench judgment of this Court in the case of Smt. Manju Devi Vs. The District Superintendent of Education, Bhagulpur and Others, . He has also placed reliance to the judgment of the Apex Court in the case of State of Kerala, etc. Vs. Very Rev. Mother Provincial, etc., , wherein according to him, it has been held that administration of minority institution must fairly be left to the minority institution itself. By referring to the judgment of the Apex Court in the case of All Bihar Christian Schools Association and Another Vs. State of Bihar and Others, , he has sought to contend that in view of Article 30 of the Constitution of India recognizing the status of minority institution of their right to establish and administering institution, the State has to only regulate syllabus of the examination and discipline of the institution. He has also submitted that Section 18 of the Act is only regulatory and directory in nature. Similarly by placing reliance on the judgment of this Court (sic--Apex Court?) in the case of T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, , he has submitted that the bare grant of Government aid does not change the nature of minority institution.

17. In the considered opinion of this Court, the petitioner while enforcing her contract of service as against a private managing committee has to abide by the service bye-laws framed by the Management of the School. From the bye-laws as registered on 21.1.1980 in the pen and signature of Inspector General of Registration in exercise of his power under Societies Registration Act, it would be clear that the founder of the school is Sahu Jain Educational Association which is the Society registered under the Societies Registration Act. There are nine members to the Governing Body in the Memorandum of Association and in the rules and regulations of Sahu Jain Educational Association, five schools, namely, Sahu Jain High School, Mirganj (Gopalganj), Sahu Jain High School, Lauriya (West Champaran), Sahu Jain Girls High School, Mirganj (Gopalganj), Sahu Jain Prarambhik Vidyalaya, Mirganj (Gopalganj), Sahu Jain Shishu sadan, Mirganj (Gopalganj) are shown to have been founded by Seth Sri Shanti Prasad Ji Jain for social uplift and they are said to be running under the guidance and control of the Sahu Jain Educational Association, an association of Jains, a minority community. The management of the aforesaid five schools has been vested in the bye-laws in the Governing Body of Sahu Jain Educational Association consisting of nine members. The power of the Governing Body has also been defined wherein apart from others under Clause 11(b), the Governing Body has been vested with power to engage and to remove the teaching and non-teaching personnel. The said Memorandum of Association has also its rules and regulations laying down power and jurisdiction of Sahu Jain Educational Association as also made provision for constitution of Managing Committee by the Governing Body of Sahu Jain Educational Association to look after the administration and educational work of the individual institution. The said bye-laws define not only the constitution of Managing Committee of the respective schools but also the power and function of the Managing Committee, its

Secretary and the Headmaster. The bye-laws also lays down prescribed form of agreement to be executed by the Managing Committee and the employee concerned appointed in the school.

18. Apart from the prescribed forms of agreement, it also contains appointment and service condition of teachers wherein the authority competent to approve promotion and appointment has been prescribed as head of the Governing Body of the said association with the consent of the Managing Committee of the School in case of Headmaster of the High School. In all other cases except the post of Headmaster, it is the Managing Committee of the School which alone is competent to approve appointment and promotion. Such service condition not only contains the specific provisions of appointment but also include service condition. Clause-5 of such service condition is relevant and is quoted hereinbelow:--

5. Disciplinary action,--The managing committee after having fully considered their explanation to charges leveled in writing against any member of the staff including the Principal/Headmaster may impose minor punishment as warning or censure and major punishment as withholding of increments, discharge or termination of service and dismissal or removal from services.

(1) Faults like late attendance, over-stayal of leave etc. may be considered as minor, while repeated minor faults in spite of warnings or censure, negligence of duty or proved inefficiency, misbehaviour likely to subvert discipline, participation in political activities, disobedience of order or misconduct involving moral turpitude will constitute major misconduct.

(2) Proceedings against the Principal/Headmaster will be started by the President of the Managing Committee on the report of the Secretary and against a teacher or clerk by the Secretary on the report of the Principal/Headmaster. The President or the Secretary, as the case may be, may meanwhile suspend persons concerned if the situation warrants.

(3) Specified charges in writing will be handed over to the person concerned within a week of his suspension asking him to submit his written explanation within fifteen days from the receipt of the charges.

(4) A clear ten days" notice shall be given to every member of the M.C. meeting in which the explanations are to be considered and at least two thirds of the members must be present.

(5) Ordinarily no person will be kept on suspension for a period exceeding two months. During the suspension the person concerned shall be given subsistence allowance equal to half of his salary besides full cost of living allowing. On his being exonerated and reinstated the balance of his salary only will be paid.

(6) No order of discharge or dismissal shall be passed unless regular charges have been framed and communicated to the person concerned with a statement of the grounds alongwith certified copies of all relevant papers on which it is

proposed to take action and unless he has been given adequate opportunity of submitting a written statement in his defence within a fortnight of the receipt of the charges as well as of being heard in person if he so desires and of examining witness at the enquiry.

(7) The resolution of discharge or dismissal shall not take effect until the body/organization in case of Principal/Headmaster or in other cases has approved it which may approve, disapprove or modify the proposal.

If disapproved the order of suspension, if any shall be vested and teacher shall be reinstated forthwith. If approved or modified, the M.C. will forthwith inform the teacher of it and it shall take effect from the date of its communication to the teacher concerned.

19. Thus, on a bare reading of the service condition, it would be clear that not only the petitioner is an employee of a private school run by a private body but, she is also bound by the terms and conditions incorporated in Clause-5 of the service condition as with regard to removal/dismissal from the school. There would be also no difficulty for this Court to hold that Clause (vii) of Clause-5, which has been relied by Mr. Giri relating to approval of a decision of dismissal, is also subject to approval of the Governing Body/Organization of this private educational society. The submission that such approval under Clause (vii) of Clause-5 refers to an approval by the authority of the State of Bihar is wholly misconceived. The respondents have asserted in the counter affidavit that the approval of the decision of dismissal of the petitioner from service on the charge of misconduct has already been accorded by the competent authority, there is no gainsaying even if there be some violation of the bye-laws of a private society running its own educational institution, the same cannot be examined much less enforced by a writ petition, inasmuch as, such Sahu Jain Educational Association by not stretch of imagination can be held to be "State" within the meaning of Article 12 of the Constitution of India.

20. As a matter of fact, Mr. Giri also does not dispute this position in law but, then, he, by referring to Section 18 of the High School Takeover Act, 1981, has submitted that as appointment of any Headmaster or Teacher in a Minority School so declared by the State cannot take place without prior approval of the competent authority as prescribed u/s 18 of the Act, the removal also has to undergo the same process and service of Headmaster or Teacher of a Minority School cannot be dispensed with without approval as contemplated u/s 18(d) of the Act. In order to appreciate such submission, it would be relevant to note here that initially when 1981 Act came into force, the relevant provision of Section 18(3) reads as follows:--

21. Subsequently, Vidyalaya Seva Board as mentioned in Sections 18(3)(b) and 18(3)(d) was deleted and substituted by Staff Selection Commission. The provision of Staff Selection Commission also however has since been amended in the year 2011 and now Section 18(3) reads as follows:--

18. Recognition of the Minority Secondary Schools.--

(1)-----

(2)-----

(3) Minority Secondary Schools recognized under above sub-sections (1) and (2) shall be managed and controlled under the following provisions:--

(a) There shall be a managing committee for every Minority Secondary School, which shall be a registered institution under the Societies Registration Act, 1860 and for which there shall be a written constitution for the constitution of the managing committee and management of the school.

(b)-

(i) The Managing Committee of Minority School may appoint Headmaster against post sanctioned by the State Govt. as per eligibility and criteria, prescribed for the nationalized secondary school after obtaining approval of Director Secondary Education through District Education Officer. Disposal of all pending cases for approval may also be made by the Director, Secondary Education.

(ii) The Managing Committee of the minority secondary school may appoint teachers against posts sanctioned by the State Govt. as per eligibility and criteria, prescribed under the Bihar Nagar Nikay Secondary and Higher Secondary Teachers (Employment) Rules, 2006 (as amended from time to time) and the Bihar Zila Parishad Secondary and Higher Secondary Teachers (Employment) Rules, 2006 (as amended from time to time) after obtaining approval of Director, Secondary Education through District Education Officer. Disposal of all pending cases for approval may also be made by the Director, Secondary Education.

(c) There shall be rules regarding service conditions of Headmaster, Teachers and Non-teaching Staff of the Minority Secondary Schools based on natural justice in and the prevailing law, whereby in addition to other provisions there will be a provision of appeal by aggrieved Headmaster, teachers or non-teaching staff against the decision of managing committee as well as provision of review and one copy of the same shall be sent to State Government.

(d) The Managing Committee may terminate from service, dismiss or demote Headmaster. Teachers of the School with the approval of the Director. Secondary Education.

(f) In case of appointment of or continuance in service of school of any Headmaster, Teacher or non-teaching staff beyond 60 (sixty) years of age, the school will not be entitled to get any grants for such Headmaster, Teaching or Non-teaching staff.

(ff) Any complaint against the decision of Director, Secondary Education under this Section will be filed before the Principal Secretary/Secretary, Human

Resources Development Department within maximum period 30 days and his decision will be considered as final.

(Underlining for emphasis)

22. A conjoint reading of Section 18(3) of the 1981 Act would go to show that since the minority institution has to its own right of management and control as guaranteed under Articles 29 & 30 of the Constitution of India, there is a prospect of minimal interference in the day to day functioning of such minority schools. This would be apparent from proviso to Section 18(3)(b) as also proviso to Section 18(3)(d) in the original Act which was in force on the date of passing the impugned order as underlined above in the quoted portion.

23. Thus, on a plain reading of Sections 18(3)(b) and (d) as it existed on the date of passing of the impugned order, neither there was any concept of a prior approval or a decision taken by the Managing Committee with regard to the termination or removal of an employee of a minority school nor the petitioner can claim any such protection in view of Section 18(3)(d) of the Act. As would be noted from the reading of Section 18(3)(b), while the power of appointment is vested in the Managing Committee of the Minority School only after obtaining approval of the Director, Secondary Education, there is no such requirement of the prior approval of the Director, Secondary Education in the matter of grant of approval as with regard to the decision of the Managing Committee for termination, dismissal or reduction in rank of the Headmaster and teachers of the minority school.

24. In that view of the matter, this Court does not find any merit in the submission of Mr. Giri that lack of approval by the earlier body, namely, Bihar Staff Selection Commission or the successor Director, Secondary Education as with regard to the decision of dismissal of the petitioner from service would vitiate such decision taken by the Governing Body of the Educational Society and the Managing Committee of the School as contained in the impugned order dated 30.1.2010.

25. As a matter of fact, the Managing Committee also in its affidavit filed in this case has accepted that it had approached the authority of the State of Bihar for giving approval to the decision of dismissal of the service of the petitioner as would be apparent from the following statement in paragraph no. 7 of the second supplementary counter affidavit, which is quoted hereinbelow:--

7. -----So far statement regarding approval of punishment of dismissal is concerned, it is stated that as mentioned in the supplementary counter affidavit, the order of punishment of petitioner has already been sent to the respondent authorities for approval vide letters 10/10 dated 30.1.2010 (Annexure-R6/K) but answering respondents have not received any reply from the respondents authorities till yet.-----

26. In view of the above, it has become clear that the matter is still pending

before the departmental authority and the petitioner, therefore, has to await the decision of the Director of the Secondary Education. It has to be noted that under the amended provision of Section 18(3)(ff), there is further appeal before the Principal Secretary, Secretary of the Human Resources Development Department within maximum period of 30 days and such the decision of the Principal Secretary is to be treated as final.

27. In that view of the matter, this Court is not required to go into the merit of the case as that may prejudice the parties in the pending approval matter before the Director, Secondary Education. It is, however, expected that if the Managing Committee has already sent a proposal seeking approval to the dismissal of the petitioner, the same shall be examined by the competent authority expeditiously in the spirit of Section 18(3)(d) of the 1981 Act wherein a very limited power has been vested in the Government or its authorities with regard to giving approval in the appointment of a teacher in the minority school.

28. Once this aspect becomes clear that there is no control of the State on the service condition of a Headmaster or Teacher in Minority School and the power of appointment and dismissal is vested in the Managing Committee of such School, there would be also no difficulty in holding that the writ application challenging such decision for a private body as communicated by the Secretary to the Managing Committee in the order dated 30.1.2010 can also not be made amenable by invoking writ jurisdiction of this Court.

29. It has to be noted that the issue in hand as with regard to the dismissal of an employee of minority institution and issuance of a writ has been examined recently by a Division Bench of this Court in the judgment dated 5.10.2002 (sic--5.10.2002) in CWJC No. 10530 of 2009 Reported in Santosh Kumar Vs. The State of Bihar and Others, wherein the petitioner Santosh Kumar, a Lecturer in the Department of Political Science in Allam Iqbal College, Bihar Sharif, Nalanda, a minority institution, had assailed an order dated 27.4.2010 terminating his service under the order of the Secretary of the Governing Body of the College. The Division Bench having considered the earlier Division Bench judgment in the case of Smt. Radha Kumari Singh Vs. The Governing Body of Mahanth Mahadevanand Mahila Mahavidyalaya and Others, and in the case of Chandra Nath Thakur and Others Vs. The Bihar Sanskrit Shiksha Board and Others, had held that the judgment of the Apex Court in the case of Anadi Mukta (supra) was clearly distinguishable. Having held so, the Division Bench in the case of Santosh Kumar (supra), had held that no writ can be issued to grant any relief to the writ petitioner who is seeking a personal right of restoration of contract to service against the Managing Committee of a private minority institution. The writ application was dismissed on the ground that no writ would lie against the private respondent in absence of any right in the petitioner with the corresponding duty of a public nature upon the respondents. The Division Bench had given liberty to the petitioner to seek his remedy through civil court of competent jurisdiction.

30. In view of the fact that the Division Bench judgment of the Santosh Kumar (supra) has also affirmed the earlier two Division Bench judgments in the case of Srimati Radha Kumari Singh @ Radha Kumari (supra) and Chandra Nath Thakur (supra), they are binding precedents and have to be followed by this Court. It is thus held that the writ application would not lie against the respondent nos. 5, 6 & 7 as with regard to seeking an enforcement of personal right of the petitioner for restoration of her contract of service against the Managing Committee of a private minority school. In view of the fact that the judgment of the Apex Court in the case of Anadi Mukta (supra) has also been considered by the Division Bench in the case of Santosh Kumar (supra), there would be no need to once again discuss the same here in this judgment. As with regard to the judgment of Mubarak Hussain (supra), all that can be said that it is not an authority on the point as to whether a writ petition would lie against the decision of a Managing Committee of a private institution at the instance of its employee. In the light of the aforesaid discussion, this writ application is dismissed on the ground that no writ application would lie at the instance of the petitioner against her order of dismissal passed by the private respondent nos. 5, 6 & 7. It is, however, made clear that such dismissal of a writ petition will not prejudice her in pursuing her remedy before the prescribed authority under Sections 18(3)(d) & (ff) of the 1981 Act.