
(2025) 04 RAJ CK 0625

In the Rajasthan High Court, Jaipur Bench

Case No : Civil Writ Petition No. 3668 Of 2017, Connected with Civil Writ Petition No. 3669 Of 2017, Civil Writ Petition No. 3670 Of 2017, Civil Writ Petition No. 3671 Of 2017, Civil Writ Petition No. 3672 Of 2017, Civil Writ Petition No. 3676 Of 2017, Civil Writ Petition No. 3677 Of 2017, Civil Writ Petition No. 3678 Of 2017, No. 3679 Of 2017, No. 3680 Of 2017, No. 7591 Of 2017, No. 7592 Of 2017, No. 7593 Of 2017, No. 16997 Of 2017, No. 16996 Of 2017, No. 17175 Of 2017, No. 17182 Of 2017, No. 7594 Of 2017, No. 7595 Of 2017, No. 7596 Of 2017, No. 7597 Of 2017, No. 7598 Of 2017, No. 7599 Of 2017, No. 7732 Of 2017, No. 14614 Of 2017, No. 14615 Of 2017, No. 14647 Of 2017, No. 14648 Of 2017, No. 14649 Of 2017, No. 14650 Of 2017, No. 14651 Of 2017, No. 14652 Of 2017, No. 14653 Of 2017, No. 14654 Of 2017, No. 16980 Of 2017, No. 1699 Of 2017, No. 16993 Of 2017, No. 16994 Of 2017, No. 16995 Of 2017

Managing Committee D.A.V. Uchh Madhyamik

APPELLANT

Vs

Smt Hemlata Khorwal And Anr

RESPONDENT

Date of Decision : 08-04-2025

Acts Referred:

Civil Procedure Code, 1908 — Order 43 Rule 1(r), Order 39 Rule 1, 2

Citation : (2025) 04 RAJ CK 0625

Hon'ble Judges : Anoop Kumar Dhand, J

Bench : Single Bench

Advocate : Shruvan Kumar Bansal, Kapil Gupta, R.S. Sinsinwar

Final Decision : Disposed of

Judgement

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Anoop Kumar Dhand, J

1. Since common questions of law and facts are involved in these writ petitions, hence, with the consent of counsel for the parties, arguments have been heard together and the instant writ petitions are being disposed of by this common order.

2. These writ petitions have been preferred against the common judgment dated 14.09.2016 passed by the Rajasthan Non-Government Educational Tribunal, Jaipur (hereinafter referred as 'the Tribunal') by which the appeals preferred by the respondents under Section 19 of the Rajasthan Non-Government Educational Institutions Act, 1989 (for short 'Act of 1989') have been allowed and their termination orders have been quashed and set aside with direction for their reinstatement in service with all consequential benefits.

3. For the sake of convenience, the facts and prayer pleaded in S.B. Civil Writ Petition No.3668/2017 is taken into consideration. The instant writ petition has been submitted with the following prayer:

"a) By appropriate writ, order or direction, the writ petition may kindly be allowed and the order dated 14.09.2016 may kindly be quashed and set aside.

(b) Any other appropriate order or direction which this Hon'ble Court deems expedient in the facts and circumstances of the case may also kindly be passed in favour of the petitioners."

4. By way of filing the instant writ petitions, a challenge has been led to the impugned judgment passed by the Tribunal on a technical point that provisions of Sections 18 of the Act of 1989 & Rule 39 of the Rajasthan Non-Government Educational Institutions Rule, 1993 (for short 'Rules of 1993') are not applicable in the case of employees who are appointed purely on contract basis.

Submissions by counsel for petitioner:

5. Learned counsel for the petitioners submits that all the respondent-employees were appointed for a fixed term in their service tenure, purely on contract basis and at the end of their term, their services were terminated with effect from 06.05.2015. Counsel submits that these employees were not selected or appointed through regular selection process, as contained under the Act of 1989 and the provisions contained under the Rules of 1993. Counsel submits that under Section 18 of the Act of 1989 details regarding the provision of removal, dismissal or reduction in rank of employees are mentioned but in the instant case, the employees were neither removed or dismissed nor their rank was reduced, hence, under these circumstances, they were not entitled to file applications under Section 21 before the Tribunal. In fact, such applications, submitted by them, were not maintainable but the same were erroneously admitted by the Tribunal, in consequence of which the order impugned has been passed, hence, under these circumstances, interference of this Court is warranted.

6. In support of her contentions counsel for the petitioner placed reliance upon the following judgments:

1) Shri Jatin Swetambar Terapanthi Manav Hitkari Sangh & Ors. vs. The Rajasthan Non-Government Educational Institutions Tribunal & Ors.; D.B. Civil Writ Petition No.3610/2003

2) Dr. Sadhana Godika vs. The Managing Committee & Ors.; S.B. Civil Writ Petition No.3103/2014

3) Managing Committee, Shri Bhawani Mahavidyalaya, Sikar & Anr. vs. Rajasthan Non-Government Educational Institution Tribunal, Jaipur; S.B. Civil Writ Petition No.8704/2009

4) Ramavtar Sharma vs. Rajasthan Non-Government Educational Institutions Tribunal, Jaipur & Ors.; S.B. Civil Writ Petition No.4868/1998

5.) Dr. Sadhana Godika vs. Managing Committee, Agarwal Shikshak Parshikshan Mahavidhyalaya, Jaipur through General Secretary/Secretary & Ors.; D.B. Special Appeal Writ No.878/2016 decided on 25.10.2017

6.) Principal & Ors. vs. Presiding Officer & & Ors. reported in 1978 AIR 344.

7. Counsel submits that in view of the submissions made hereinabove, the impugned order passed by the Tribunal is not sustainable in the eyes of law and is liable to be quashed and set aside.

Submissions by counsel for respondents:

8. Per contra, learned counsel for the respondents opposed the arguments raised by counsel for the petitioner and submitted that the respondents were appointed, after going through the selection process in accordance with law, but the petitioner-management has shown their appointment as temporary, with a view to maintain facets of exploitation and to keep the employees on temporary basis in order to restrain them from becoming permanent. Counsel submits that without following the provisions contained under Section 18 of the Act of 1989, the services of all the employees were terminated. Counsel submits that such an action on the part of the petitioner-management is in contravention of the provisions contained under the Act of 1989, hence, under these circumstances, the employees were having no other alternative except to file an application under Section 21 of the Act of 1989 before the Tribunal. Counsel submits that the word "employee" has been defined under Section 2(i) of the Act of 1989 which includes a teacher or every other employee working in a recognized institution. The definition is not concerned with whether he/she was appointed on a sanctioned post on temporary or contract basis. Counsel submits that the issue raised in the instant writ petitions is no more res integra, as the same has been decided by the Co-ordinate Single Bench and Division Benches of this Court in catena of judgments.

9. In support of his contentions counsel has placed reliance upon the following judgments:

1) Honorary Secretary, Maheshwari Balika Vidyalaya, Jaipur vs. Ravindra Pareek & Anr. reported in 1996 (3) WLC 102

2) Yogendra Kumar Mishra vs. Rajasthan Non-Government Educational Institution Tribunal; S.B. Civil Writ Petition No.2453/2001

3) Bhopalwala Arya Higher Secondary School vs. Mr. Nand Lal Saraswat & Ors.; D.B. Civil Special Appeal No.860/2008

4) Sri Sanatan Dharm Shastri Sanskrit Mahavidyalaya vs. State of Rajasthan & Ors.; D.B. Civil Special Appeal (Writ) No.522/2013.

10. Counsel submits that in view of the submissions made hereinabove, the writ petitions submitted by the petitioner-management are liable to be rejected and the order passed by the Tribunal is liable to be upheld.

Discussions & Analysis:

11. Heard and considered the submissions made at Bar and perused the material available on the record.

12. The legal issue involved in these writ petitions is that "whether services of any contractual or fixed term employee can be terminated without following the provisions contained under Section 18(iii) of the Act of 1989? and Whether appeal filed against such termination order is maintainable under Section 19 of the Act of 1989?"

13. Before entering into the merits of these writ petitions, this Court thought it proper to address the other issue that is "whether a person be left remediless if the statute does not provide for an appeal? and whether an aggrieved person can be allowed to remain silent, if any adverse order is passed against him?"

14. Equity will not suffer a wrong without a remedy. Where there is a legal right, there is a remedy. The law is settled that in every case where a man is wronged and endamaged he must have a remedy. The principle of Ubi Jus Ibi Remedium is recognised as a fundamental principle of the theory of law and philosophy. It is the Court's responsibility to protect and preserve the right of parties and to support them, rather than refusing the relief.

15. The Latin maxim ubi jus ibi remedium means that "where there is a right, there is a remedy".

The principle underscores that no wrong should go without a remedy. This maxim should be applied to establish a principle that safeguards the fundamental rights of citizens who may suffer due to legal proceedings. According to this maxim, whenever common law recognizes a right or prohibits an injury, it also provides a remedy. In other words, any constitutional or statutory right possessed by a citizen must be protected by the courts.

16. In the leading case of Ashby Vs. White reported in (1703) 92 ER 126, (1703) 2 Ld Raym 938, (1703) 1 Sm LC (13th Edn) 253 decided on 01.01.1703, the Court of Kings Bench in United Kingdom observed that when law cloths a man with a right he must have means to vindicate and maintain it and remedy it if he is injured in the exercise and enjoyment of it and it is a vain thing to imagine a right without a remedy for want of right and want of remedy a reciprocal.

17. Referring to the rule of "ubi jus ibi remedium", the Hon'ble Apex Court has observed in the case of M/s. Shiv Shanker Dal Mills and Others Vs. State of Harayana reported in 1980(2) SCC 437 that if legal injury is caused to any person, then aggrieved person has at least one remedy of appeal to challenge the correctness of the order impugned passed against him.

18. Similarly, the maxim Lex Semper Dabit Remedium translates to "the law always provides a remedy." It reflects the idea that it is futile to conceive of a right without a remedy, as the existence of a right inherently implies the existence of a means to protect and enforce it. Thus, if a person holds a right, they must have the means to assert and defend it, along with a remedy if that right is violated.

19. In the case of Union of India Vs. S.B. Vohra reported in (2004) 2 SCC 150, the Hon'ble Supreme Court had the occasion to examine the broad principles of judicial review wherein it has been observed that judicial review is a highly complex and developing subject and it is considered to be the basic feature of the Constitution. The Court in exercise of its power of judicial review would zealously guard the human rights, fundamental rights and the citizen's right of life and liberty.

20. The Division Bench of Himachal Pradesh High Court in the case of Ravinder Chatra Vs. State of Himachal Pradesh and Ors., reported in 2018 SCC Online HP 1450 has observed that the right to appeal is a creation of statute but in absence of such provision, the aggrieved person cannot be left remediless and it

has been held in para 5 as under:-

"5. There is another reason which prompts us to enable the petitioner to file the appeal. The Himachal Pradesh Public Moneys (Recovery of Dues) Act, 2000 does not provide any remedy of appeal etc. Though, the right to appeal is a creation of Statute, but, it appears to us that the petitioner cannot be left remediless on the question of determination of the actual loan amount payable by the borrower or the petitioner. We thus, direct Registrar Cooperative Societies to entertain the arbitration application/petition, as may be preferred by the petitioner under Sections 72 (d) & (e) and 73 of the 1968 Act, and adjudicated the same in accordance with law and principles of natural justice within a period of four months from the date of filing of such petition. The petitioner shall be at liberty to seek interim relief before the authority referred to above."

21. Hence, it is clear that every aggrieved person has the remedy against the adverse order passed against him and no person can be left remediless. Now this Court proceeds further to examine the matter on its merits.

22. As per the petitioner, the respondents-employees were given a fixed- term contract and after completion of the same, the term came to an end. While as per the respondents, they were granted appointment after following the selection process, but their appointment was treated as "temporary" with a view to

restrain them from becoming permanent.

This Court finds no merit in the pleadings and arguments presented by the respondents-employees claiming that they were appointed after following the selection process, as no supporting documents have been produced by them. There was neither any advertisement nor any approval of the State Government regarding their appointment. Therefore, it is not possible to assume that their appointment was made after following the regular selection process. In fact, their appointment was made on temporary basis, for a fixed term and on completion of the same, their services were to be terminated, without following the mandate, contained under Section 18(iii) of the Act of 1989. For ready reference, Section 18 is reproduced as under:

"Section 18 of the Act of 1989.

Removal, dismissal or reduction in rank of employees – Subject to any rules that may be made in this behalf, no employee of a recognised institution shall be removed, dismissed or reduced in rank unless he has been given by the management a reasonable opportunity of being heard against the action proposed to be taken:

Provided that no final order in this regard shall be passed unless prior approval of the Director of Education or an officer authorised by him in this behalf has been obtained:

(i) xxxxxxxxxxxx

(ii) xxxxxxxxxxxx

(iii) Where the managing committee is of unanimous opinion that the services of an employee can not be continued without prejudice to the interest of the institution, the services of such employee are terminated after giving him six months notice or salary in lieu thereof and the consent of the Director of Education is obtained in writing."

23. Section 18 of the Act of 1989 does not make any distinction for its applicability between a person appointed on temporary or permanent basis. The bare perusal of the language of the Section 18 of the Act of 1989 indicates that it is applicable on all the employees of the recognized institution.

24. Similarly, Rule 39 of the Rules, 1993 also deals with the provisions and procedure of removal or dismissal from service. The same is extracted as under:

"Rule 39 of the Rules of 1993.

Removal or Dismissal from Service-

(1)The services of an employee appointed temporarily for six months, may be terminated by the management at any time after giving at least one month's notice or one month's salary in lieu thereof. Temporary employee, who wishes to resign shall also give atleast one month's notice in advance or in lieu thereof

deposit or surrender one month's salary to the management.

(2) An employee, other than the employee referred to in sub-rule (1), may be removed or dismissed from service

on the grounds of insubordination, inefficiency, neglect of duty, misconduct or any other grounds which makes the employee unsuitable for further retention in

service. But the following procedure shall be adopted

for the removal or dismissal of an employee:-

(a) to (g)xxxxxxxxx

(h) On receipt of the approval as mentioned in sub-clause (g) above, the managing committee may issue appropriate order of removal or dismissal as the case may be and forward a copy of such order to the employee concerned and also to the Director of Education or the officer authorised by him in this behalf:

Provided that the provisions of this rule shall not apply:-

(I) xxxxxxxxxxxxxx

(ii) xxxxxxxxxxxxxx

(iii) Where the managing committee is of unanimous opinion that, the services of an employee cannot be continued without prejudice to the interest of the institution, the service of such employee are terminated after giving him six months notice or salary in lieu thereof and the consent of the Director of Education is obtained in writing.."

25. A combined reading of Section 18 of the Act of 1989 and Rule 39 of the Rules of 1993 makes it explicitly clear that in the case of temporary employee, appointed for six months, his services can be terminated by the Management at any point of time, after giving six month's notice or six month's salary in lieu thereof. The first proviso attach to Section 18 of the Act of 1989 requires that approval of the Director of Education is required to be obtained in the matters of removal or dismissal of the employee.

26. The word 'employee' has been defined under Section 2(i) of the Act of 1989 and the same includes a teacher and every other employee in a recognized institution. There is no distinction between a person appointed on regular basis or temporary basis.

27. In case of regular appointments, the recruitment process is required to be conducted, the vacancies are required to be advertised and the appointments are to be given after getting approval from the State Government. Also, the consent of the representatives of the Department of Education is required. But in case of temporary or contractual appointments, no such procedure is required to be followed. The service of such temporary employees cannot be terminated by passing a single line order, without providing any reasons and the process

contained under Section 18(iii) of the Act of 1989 is only required to be followed. The Rajasthan Non-Government Educational Institutions Act, 1989 (Act No. 19 of 1992) is a social legislation to provide for better organisation and development of education in the non-government educational institutions in the State of Rajasthan. It is also intended to check various malpractices and mischief's which were being committed by some unscrupulous Managements of non- government educational institutions, qua their teachers and employees. The Teachers and other employees of such institutions have been victims of arbitrary hiring and firing policy of the management as they used to adopt the policy of ad-hocism. Such Managements followed the policy of ad-hocism in appointing teachers who constituted the bulk of the educated un-employed persons. The teachers and other employees were compelled to accept these jobs on ad-hoc basis with miserable conditions of service as they had no option. The various provisions contained in the Act now provide sufficient safeguards against such arbitrary action of the Management. Chapter-VI of the Act under the head "Conditions of Service and Tribunal" contains regulatory provisions relating to the terms and conditions of employment of aided institutions in the State. Section-16 empowers the state Government to regulate the terms and conditions of employment.

28. The term 'employee,' as defined under Section 2(i) of the Act of 1989, refers to any individual, employed, either on regular or temporary basis. Hence, the procedure contained under Section 18(iii) of the Act is required, to be followed in the case of termination of services of a temporary employee.

Judgments referred:

29. The Hon'ble Apex Court as well as the Division Benches and Co-ordinate Single Benches of this Court have categorically dealt with this issue in a number of judgments. Few of them are discussed hereinunder:

29.1. In the case of Management Committee of Montfort Senior Secondary School Vs. Shri Vijay Kumar and Ors (Civil Appeal Nos. 5143 and 6593 of 2003), decided on

12. 09.2005, the Hon'ble Apex Court in para 7 has observed as under:-

"In St. Xaviers' case (supra) the following observation was made, which was noted in Frank Anthony's case (supra):

"A regulation which is designed to prevent maladministration of an educational institution cannot be said to offend clause (1) of Article 30. At the same time it has to be ensured that under the power of making regulation nothing is done as would detract from the character of the institution as a minority educational institution or which would impinge upon the rights of the minorities to establish and administer educational institutions of their choice. The right conferred by Article 30(1) is intended to be real and effective and not a mere pious and abstract sentiment; it is a promise of reality and not a teasing illusion. Such a right cannot be allowed to be whittled down by any measure masquerading as a

regulation. As observed by this Court in the case of *Rev. Sidhajibhai Sabhai* (supra), regulations which may lawfully be imposed either by legislative or executive action as a condition of receiving grant or of recognition must be directed to making the institution while retaining its character as minority institution as an educational institution. Such regulation must satisfy a dual test: the test of reasonableness, and the test that it is regulative of the educational character of the institution and is conducive to making the institution an effective vehicle of education for the minority or other persons who resort to it. The effect of the decision in *Frank Anthony's case* (supra) is that the statutory rights and privileges of Chapter IV have been extended to the employees covered by Chapter V and, therefore, the contractual rights have to be judged in the background of statutory rights. In view of what has been stated in *Frank Anthony's case* (supra) the very nature of employment has undergone a transformation and services of the employees in minorities un-aided schools governed under Chapter V are no longer contractual in nature but they are statutory. The qualifications, leaves, salaries, age of retirement, pension, dismissal, removal, reduction in rank, suspension and other conditions of service are to be governed exclusively under the statutory regime provided in Chapter IV. The Tribunal constituted under Section 11 is the forum provided for enforcing some of these rights. In *Premier Automobiles Ltd. v. Kamlekar Shantaram Wadke of Bombay and Ors.* (1976 (1) SCC 496), it has been observed that if a statute confers a right and in the same breath provides for a remedy for enforcement of such right, the remedy provided by the statute is an exclusive one. If an employee seeks to enforce rights and obligations created under Chapter IV, a remedy is available to him to get an adjudication in the manner provided in Chapter IV by the prescribed forum i.e. the Tribunal. That being so, the Tribunal cannot and in fact has no power and jurisdiction to hear the appeal on merits and only way is to ask the parties to go for arbitration."

29.2. The Division Bench of this Court in the case of *Sri Sanatan Dharm Sdhastris Sanskrit Mahavidyalaya Vs. State of Rajasthan and Ors.* (D.B. Civil Special Appeal (Writ) No.522/2013), decided on 19.09.2013 in para 7 has observed as under:-

"Learned counsel for the respondent-employee supporting the order dated 30th July, 2001 passed by the Tribunal as well as the order passed by the learned Single Judge dated 12th March, 2013 and reiterating the pleaded facts pointed out that the respondent-employee never abandoned the job rather he was exploited and harassed by the appellant to get rid of him for the reasons best known to the appellant Institute; probably for he claimed his lawful right in accordance with law and voiced against the practice to compel him for donation in favour of the appellant Institute. Further, the appellant Institute could not assail its own order after having allowed the respondent-employee to work for 5 years without any complaint from any quarter. Moreover, under the provisions of the Act of 1989 and the Rules of 1993, employees of the aided institutions are entitled to pay scale at par with the government employees in view of the principle of "equal pay for equal work". Since the respondent-employee was not

allowed to work, he had no option but to ventilate his grievance before the Tribunal. Moreover, the appellant Institute continued him in employment for almost five years and paid salary from the funds of the Managing Committee without raising any objection as to the nature and legality of his appointment. The mere fact that the appellant Institute was availing grant-in-aid did not bring the Institute within the ambit of Article 12 of the Constitution of India and therefore, it was not a case of public employment and hence, law declared by the Hon'ble Apex Court of the land in case of

State of Karnataka Versus Uma Devi – [(2006) 4 SCC 1], had no application to the facts of the instant case at hand.”

29.3. Further, the Division Bench of this High Court at principal seat, Jodhpur in the case of Bhopalwala Arya Higher Secondary School Vs. Mr. Nand Lal Saraswat & Ors. (D.B. Civil Special Appeal No. 860/2008), decided on 28.11.2008 has observed in paras 3, 6, 10-13 & 15-16 as under:-

“3. The respondent no. 1 entered the services of the appellant institution on being appointed as part time Library Clerk on temporary basis, vide order dated 29.8.98 on a consolidated salary Rs.2,000/-. As per the terms of the appointment order, the temporary appointment accorded as aforesaid was to be continued till the end of the academic session. Accordingly, the services of the respondent no.1 was brought to an end on the expiry of the term, however, in the next academic session, vide order dated 5.7.99 issued on behalf of the appellant institution, he was reappointed on the said post for a period of six months w.e.f. 5.7.99 or from the date of the joining of the duties, whichever is earlier, on consolidated salary of Rs.2250/-. However, vide order dated 22.12.99, the term of the appointment was further extended till the end of the academic session 1999-2000. This arrangement of fixed term appointment till the end of the academic sessions continued upto the academic session 2004 -05. Lastly, vide order dated 1.7.04, the respondent no. 1 was accorded appointment for the period 16.7.04 to 14.5.05. According to the respondent no. 1 he was in continuous service of the appellant institution ever since his initial appointment till his services were brought to an end by an oral order w.e.f. 8.7.05. In these circumstances, the validity of the termination of his services as aforesaid was assailed by the respondent no. 1 by way of an appeal u/s 19 of the Act of 1989 before the learned tribunal.

6. After due consideration, the learned tribunal found that the respondent no. 1 is covered by the definition of "employee" as set out in Section 2(i) of the Act of 1989 and therefore, his services could not have been brought to an end without compliance of the provisions of Section 18 of the Act of 1989 and Rule 39 of the Rules of 1993. The learned tribunal found that the termination of the services of respondent no.1 at the end of each academic session and fresh engagement at the beginning of the session was a device planned by the appellant institution so as to deny him the salary of summer vacations. The learned tribunal opined that the termination of services of even a temporary employee without assigning any

reasons violative of the principle of natural justice. Accordingly, holding the termination of the services of respondent no. 1 illegal, the learned tribunal directed his reinstatement in service with the back wages. The respondent no. 1 was held entitled for salary of the summer vacations as well. However, the appellant institution has been given liberty to terminate the services of the respondent no. 1 after due compliance of the provisions of Act of 1989 and the Rules of 1993.

10. We have considered the rival submissions and perused the material on record.

11. ****

12. ****

13. A conjoint reading of the provisions of Section 18 of the Act of 1989 and Rule 39 of the Rules of 1993, makes it abundantly clear that primarily, these provisions deal with dismissal, removal or reduction in rank of the employees of recognised institution as a measure of disciplinary action for the acts of misdemeanor committed by them.

The definition of the "employee" set out in Section 2(i) of the Act of 1989 is couched in very wide terms and it includes within its ambit a teacher and every other employee working in the recognised institution, therefore, it goes without saying that the provisions of Section 18 of the Act of 1989, which provides that no employee of a recognised institution shall be removed, dismissed or reduced in rank unless he has been given by the management a reasonable opportunity of being heard against the action proposed to be taken, shall apply even to the temporary employees. However, in view of the provisions of Rule 39(1) of the Rules of 1993, the services of an employee appointed temporarily only for a period of six months may be terminated by the management of the institution at any time after giving him at least one month's notice or one month's salary in lieu thereof, therefore, before termination of services of such a temporary employee, no opportunity of hearing is required to be given and before termination of his services, the consent of the Director of Education is also not required to be obtained. But, from the provisions of Rule 39(1) of the Rules of 1993, it can be in no manner inferred that in case of a fixed term appointment, may be for a period of six months or more, the management is required to give an employee a notice even if he is allowed to continue in service for entire term of the appointment and his services comes to an end with the expiry of the term of appointment. But then, as per clause (iii) of the second proviso to Section 18 and clause (iii) of proviso to Rule 39, the provisions of Section 18 providing for reasonable opportunity of being heard against the action proposed to be taken shall not apply where the management committees is of the unanimous opinion that the services of an employee cannot be continued without prejudice to the interest of the institution, however, the services of such employee can be terminated only after giving him six months notice or salary in pursuance thereof and after obtaining the consent of the Director in writing.

In our considered opinion, if an employee has continued in service of an educational institution governed by the provisions of Act of 1989 and the Rules of 1993, even on temporary basis for years together then, his services otherwise than by way of disciplinary proceedings can be terminated by the management committee of the institution on the existence of the contingency provided under clause (iii) of second proviso to Section 18 after giving him six months notice or salary in lieu thereof and obtaining the consent of the Director of Education in writing.

15. It is pertinent to note that before the learned tribunal, the respondent no. 1 had taken a categorical stand in para no. 6 of the appeal that he was initially appointed on the substantive post of Library Clerk vide order dated 29.8.98 on part time basis after adopting due process of selection. The averments made as aforesaid stands admitted by the appellant institution in reply to the appeal filed before the learned tribunal. That apart:, in para no. 8 of the appeal the respondent no. 1 had taken the specific stand that under the orders of the Principal of the appellant institution, he used to come to the school regularly to do office and library work during the summer vacation, however, the salary of the summer vacation was denied to him. A perusal of the reply to the appeal filed before the learned tribunal show that even these averments have also not been denied by the appellant institution. Moreover, from bare perusal of the terms of the appointment orders issued by the appellant institution time to time, appointing the respondent no.1 as Library Clerk at the commencement of the academic session and terminating his services at the end of the each academic session manifestly shows that the device of giving appointment for a fixed term as alleged, was planned just to deny the respondent no. 1 the salary for the summer vacation and lest he should claim the permanent appointment on account of continuity of service. Thus, on the facts and in the circumstances of the case noticed above, in our considered opinion, the action of the appellant institution in giving appointment to the respondent no. 1 in each academic session for a fixed term by giving artificial break is exfacie illegal and arbitrary, which cannot be countenanced by this Court. Thus, the artificial breaks deserves to be ignored and the respondent no. 1 has to be treated in continuous service of the appellant institution ever since his initial appointment vide order dated 29.8.98.

16. That apart, the respondent no.1 who was in continuous service of the appellant institution for about 7 years, his services could not have been brought to an end without compliance of the provisions of Section 18 of the Act of 1989 and Rule 39 of the Rules of 1993. Admittedly, neither any notice in terms of Section 18 or the salary in lieu thereof was given to the respondent no. 1 before termination of his services nor the consent of the Director of Education has been obtained before termination of his services, therefore, in our considered opinion, the learned tribunal has committed no error in holding termination of the services of respondent no. 1 as illegal being violative of the provisions of Section 18 and Rule 39 of the Rules of 1993.

29.4. The Coordinate Bench of this Court in the case of Managing Committee Vs. Smt. Pushpa Sharma; reported in (2006) 3 WLC 504 in para 11 has observed as under:-

"11. As regards further submission on applicability of Section 18 of the Act of 1989, only in case action is taken by way of disciplinary action and not simple termination, we are of the view that the main Section 18 and Proviso

(iii) of the Act of 1989 will cover both type of cases and said Section has (iii) of the Act of 1989 will cover both type of cases and said Section has been enacted with a view to check the arbitrary action of the management in removing, dismissing, reducing in rank and termination also.

Therefore, the provisions of reasonable opportunity/unanimous resolution of Managing Committee and approval/consent of the Director are made mandatory in the order to ensure the fairness of the action. Neither there is unanimous resolution of the Managing Committee nor six months notice was given nor payment of six months salary in lieu of notice was given nor consent of the Director was taken. Therefore, even if the case is taken to be of termination, then also mandatory Proviso (iii) of Section 18 of the Act of 1989 has been violated. The said Section is applicable in respect of all the employee whose services have been dismissed by way of disciplinary action or simple termination."

30. Recently, the Hon'ble Supreme Court of India in the case of Gajanand Sharma Vs. Adarsh Siksha Parisad Samiti and Ors. (Civil Appeal Nos. 100-101 of 2023), decided on 19.01.2023, in para 5.5 and 5.6 has categorically held as under:-

"5.5 Even on fair reading of Section 18 of the Act, 1989, we are of the opinion that in case of termination of an employee of a recognized institution prior approval of the Director of Education or an officer authorised by him in this behalf has to be obtained. In Section 18, there is no distinction between the termination, removal, or reduction in rank after the disciplinary proceedings/enquiry or even without disciplinary proceedings/enquiry. As per the settled position of law the provisions of the statute are to be read as they are. Nothing to be added and or taken away. The words used are "no employee of a recognized institution shall be removed without holding any enquiry and it further provides that no final order in this regard shall be passed unless prior approval of the Director of Education has been obtained." The first part of Section 18 is to be read along with first proviso. Under the circumstances, taking a contrary view that in case of dismissal/removal of an employee of a recognized institution which is after holding the departmental enquiry the prior approval of the Director of Education is not required is unsustainable and to that extent the judgment of the Larger Bench of the Rajasthan High Court in the case of Central Academy Society (supra) is not a good law.

5.6 Therefore, on true interpretation of Section 18 of the Act, 1989, it is specifically observed and held that even in case of termination/removal of an

employee of a recognized institution after holding departmental enquiry/proceedings prior approval of the Director of Education has to be obtained as per first proviso to Section 18 of the Act, 1989."

Conclusion & Directions:

31. Applying the above propositions of law, as laid down in the above noted judgments, it can safely be concluded that in the case of termination of service of both the regular and temporary employee of a recognised educational institution, the provisions contained under Section 18(iii) is required to be followed. Their services cannot be terminated without giving six months' notice or at least six months' salary.

32. The whole purpose behind enactment of the Act of 1989 and Rules of 1993 and the provisions made therein i.e. Section 18 and Rule 39 is to check arbitrary action on the part of the unscrupulous management of the educational institutions. The Act of 1989 and the Rules of 1993 made thereunder are social legislation enacted to ameliorate and improve educational system. Intention of the Act and the Rules formed thereunder, is to check the various malpractices and mischiefs committed by the mighty management to exploit its employees whether appointed on regular or temporary basis. The language contained under Section 18 and Rule 39 is clear and specific and it requires no other interpretation. These provisions are available to all employees, whether he/she is appointed on regular or temporary basis.

33. Hence, it is clear that appeal under Section 19 of the Act of 1989 is maintainable in similar matters of termination from service, of temporary employees. The judgment relied upon by the petitioner are not applicable in the facts and circumstances of the present case.

34. In the instant matters, the respondent-employees were neither given six months notice nor salary in lieu thereof and without following the mandate contained under Section 18(iii) of the Act of 1989, the services were terminated. The service of the respondents were terminated by the petitioner in an arbitrary manner. The same was found to be illegal by the Tribunal by passing a reasoned and speaking order which requires no interference of this Court.

35. In view of the observations made hereinabove, this Court finds no merit and substance in these writ petitions, accordingly, the same are liable to be and are hereby rejected.

36. All pending application(s), if any, also stand dismissed.

37. No order as to cost.

38. Before parting with this order, it is made clear that the petitioner would be at liberty to proceed against the respondent after following the due process of law as contained under the Act of 1989 and Rules of 1993.