
(1997) 09 AP CK 0029
In the Andhra Pradesh High Court
Case No : Appeal No. 985 of 1990

V. Parvateesam

APPELLANT

Vs

Hindustan Shipyard Ltd. and Others

RESPONDENT

Date of Decision : 15-09-1997

Acts Referred:

Andhra Pradesh Recognised Private Educational Institutions (Control) Act, 1975 —
Section 3

Citation : (1998) 1 ALT 691

Hon'ble Judges : S. Paravatha Rao, J

Bench : Single Bench

Advocate : M. Rama Mohan Rao, for the Appellant; G. Suryanarayana Murthy,
for Kalyan Ram, for the Respondent

Final Decision : Allowed

Judgement

S. Paravatha Rao, J.—This is plaintiff's appeal against the judgment and decree of the learned Principal Subordinate Judge at Visakhapatnam dated 5-2-1990 dismissing his suit O.S. No. 225 of 1984 for recovery of a sum of Rs. 97, 275=08 Ps. from defendants 1 and 2 with subsequent interest at 12 per cent per annum claimed by him as due towards his salary from 1-5-1980 to 14-7-1983 etc., and for costs etc., the plaint was presented on 7-6-1984. Defendants 1 and 2 in the suit are respondents 1 and 2 respectively in this appeal.

2. Before entering into the area of the conflict, the undisputed facts can be stated in brief. The 1st defendant/1st respondent herein is Hindustan Shipyard Limited, a Government of India undertaking, formed in 1955. It is having its Shipyard at Visakhapatnam. The 2nd defendant/ 2nd respondent herein is a society which was formed in May, 1959 and was registered under the "Societies Registration Act, 1860". They are referred to hereafter as "the Shipyard" and "the Society" respectively. One of the objects of the society is to take over the management of the existing educational institutions as per its Memorandum of Association (Ex. A.19 is its certified copy). It took-over an elementary school

started by Ramakrishna Mission for the benefit of the children of the employees in the Shipyard colony at Gandhigram. That school was upgraded as high school in 1959 and then a Junior College in 1972 and named as "Hindustan Shipyard Junior College {"the Junior College" for short). It is located at Gandhigram in Visakhapatnam. As per the Rules and Regulations of the Society (Ex. A-19), all the shipyard employees residing in the Shipyard colony, Gandhigram having school going children or dependents interested in the schools run and managed by the Society and are desirous of joining and of taking advantage of educational organisations in the Shipyard colony, Gandhigram are entitled to become members of the Society. The President, Secretary and Treasurer and one member from the public - all nominated by the Managing Director of the Shipyard - are the members of the managing committee of the Society (among others) and "shall ipso facto become members of the society". The Secretary shall have the general control over all the affairs of the Society and he shall be responsible for the routine administration of the Society and the schools under its management." The managing committee shall have the power to appoint trained and efficient staff keeping in view the various qualifications prescribed by the Government and other public authorities and shall have the power to fine, suspend or dismiss the staff. D.W. 1 (the only witness examined on behalf of the defendants) was the Secretary-cum-Correspondent of the Society from 1-2-1980 to 24-3-1983. He states that he was working as Deputy Manager in the Personnel department of the Shipyard and ,that the Shipyard financed the Junior College for a period of five years till the State Government sanctioned grant-in-aid.

3. The plaintiff was originally appointed in the high school at Gandhigram run by the Society as a B. Ed. assistant in the year 1961 and he was promoted as Head Master of the School in the year 1965. After that high School was upgraded as Junior College in 1972, the post of Head Master was also upgraded and redesignated as Principal and the plaintiff thus became Principal of the Junior College at Gandhigram. As the plaintiff was a third Class M. A., initially the Government of Andhra Pradesh did not approve the appointment of the plaintiff as Principal of the Junior College and required the Correspondent to replace him by a qualified person though the managing committee of the Society strongly recommended the case of the plaintiff. After the plaintiff approached this Court by way of Writ Petition No. 680 of 1990, the State Government gave exemption to him for continuing him as Principal (D.W. 1 states this).

4. It is the case of the plaintiff in the present suit that due to certain differences between him and the Board of Directors of the Shipyard, on 27-5-1980 {by Ex. A-7) he was asked to handover charge under the threat of insubordination and disciplinary action without clarifying what other substantive post he would hold other than the of Principal. Questioning that, complaining of victimization, he preferred an appeal to the Director of Higher Education and competent authority by his representation dated 28-7-1980 (Ex. A-13) and by proceedings dated 21-8-1980 (Ex. A-14), the Joint Director directed the Society to continue him as

Principal holding that its impugned action was illegal. Without complying with that order, the Society made representation dated 2-9-1980 to the Joint Director and competent authority. Then the Joint Director of Higher Education by proceedings dated 30-9-1980 (Ex. A-15) required the plaintiff to submit his explanation and, after he sent a detailed explanation, the Joint Director of Higher Education by his proceedings dated 23-1-1981 (Ex. A-16) directed the Society to immediately restore the plaintiff as Principal of the Junior College, but the Society did not comply with the same in spite of several letters written by the plaintiff. The plaintiff finally addressed letter dated 7-7-1981 (Ex. A-27) stating that he was being prevented from performing his legitimate duties and that he would be entitled to salary of the Principal with all increments and other benefits as revised from time to time with effect from 1-5-1980 after deducting any payments that may have been credited to his account. Thereafter, the plaintiff received communication dated 30-6-1983 (Ex. A-3) referring to the proceedings of the Director of Higher Education dated 24-6-1983 reinstating him as Principal of the Junior College with effect from the date on which he was relieved from the post of Principal. Pursuant to that communication, the plaintiff took charge as Principal of the Junior College with effect from the Forenoon of 30-6-1983 and acted as such till he retired on 14-7-1983 Afternoon on attaining the age of superannuation and the same was communicated to the concerned authorities. It is also the plaintiff's case that on 25-6-1983 his pay and other allowances were revised and refixed with effect from 5-9-1978 as per the recommendations of the 3rd Pay Commission and that after retirement from service he addressed letter dated 6-10-1983 to the Society requesting payment of all the arrears of salary due to him, enclosing a statement showing the details of the salary and other emoluments due to him from 1-3-1979 till superannuation. The 2nd defendant also addressed letter dated 17-11-1983 (Ex. X-2) to the Director of Higher Education for releasing entire amount by way of teaching grant for payment to the plaintiff, with a copy to him, as the post of Principal of the Junior College was a sanctioned post admitted to grant-in-aid and his appointment to the said post was approved by the Secretary to the Intermediate Board of Education. The Shipyard got published in Telugu Daily "Eenadu" dated 19-2-1984 that Sri A. Krishna Murthy (P. W. 2), the then Secretary and Correspondent of the Society, resigned his post with effect from 30-6-1983 and that consequently, he ceased to have any authority to issue orders, etc. on or after 30-6-1983. It is the case of the plaintiff that the contents of the said publication are false and that they were made only with an attempt to nullify the action of the said Krishna Murthy reinstating him as Principal with effect from 30-6-1983 as per the proceedings of the Director of Higher Education. Subsequently, the Shipyard and the Society got published another notice in Eenadu to the effect that the plaintiff was dismissed from the post of Principal for proven misconduct by an order dated 21-7-1983 after due enquiry. The plaintiff contends that there was no question of his being dismissed on 21-7-1983 when he already retired from service on 14-7-1983 and that the contents of the said notice are false to the knowledge of the persons issuing the same. It is on this basis that the plaintiff instituted the suit claiming

in all Rs. 97,275-08 Ps. made up as follows:

Rs. Ps. Rs. Ps. 1. Arrears of salary from 76,146-67 1-5-80 to 14-7-83 2. Amount due consequent on revision of pay scales and allowances implemented in 2,330-18 78,476-85 1980 W.e.f 1-3-79 till 31-4-80 as salary was paid till then. 3. Interest at 12% per annum on the salary for the period from 1-5-80 till 14-7-83 17,665-96 18,798-23 4. Ditto-on the difference of salary from 1-3-79 to 30-4-80 1,132-27 Total : - 97,275-08

5. In the Written Statement of the Society, which was adopted by the Shipyard, it is denied that the actual functioning of the Society was controlled by the Shipyard. Though the Shipyard had been giving contributions or donations whenever it was thought fit, it was under no obligation to meet the financial requirements of the Junior College. It is also denied that the Junior College was dominated by the Board of Directors of the Shipyard. The defendants state that the Correspondent and Secretary received a report from the Regional Inspecting Officer, Board of Intermediate Education, who inspected the Junior College, wherein he stated that "the administration of the College was in a very deplorable condition" and suggested that "a Principal from a Government College may be taken on deputation for some period to set matters right"; and that when a copy of that report was sent to the plaintiff, he felt very much piqued and while offering comments (Ex. B-1) he stated as follows :

"I hereby quit the post of the Principal of Hindustan Shipyard Junior College till the findings of the open enquiry by the Director of Higher Education are known. Till then I will continue in my substantive post with immediate effect. Instructions are solicited from the Correspondent to whom he desires to hand over the full charge of the College."

Thereupon, the managing committee of the Society unanimously resolved "to accept the unilateral and voluntary action taken by "the plaintiff" to quit the post of Principal of Junior College with immediate effect and to allow him until further orders to continue in his original post" and further resolved that the plaintiff should hand over charge to one Sri V. Buchanna Panthulu, the senior most Junior Lecturer, who will take over as Principal incharge and shall hold the post until further orders from the managing committee. Pursuant to the said resolutions, by order dated 1-5-1980 (Ex. A-6) Sri. V. Buchanna Panthulu was appointed as Principal incharge and was asked to take over charge and relieve the plaintiff. A copy of that order was sent by the Secretary -cum-Correspondent to the plaintiff along with a covering letter dated 3-5-1980 (Ex.B-3). The plaintiff received the same and agreed to hand over charge expeditiously. Thereafter, plaintiff addressed letter dated 19-5-1980 (Ex. B-2) from which it was clear that he wanted to resile from his earlier position stating that there was no need for him to hand over charge. By letter dated 27-5-1980 (Ex.A-7) the Secretary and Correspondent gave notice to the plaintiff to hand over charge to Sri. S.N. Hussain, Junior Lecturer as Sri V.B. Panthulu was out of station, before 12 Noon of 28-5-1980 and that any further delay by the plaintiff would be considered as

insubordination; after that the plaintiff handed over charge on 28-5-1980 and "he was directed to join his substantive post which happened to be B.Ed. Assistant under the above circumstances". That is how in their written statement the defendants explained their action in reverting the plaintiff as B.Ed. Assistant. The Society further stated in its written statement that "the plaintiff himself is fully aware of the fact that as per the orders already issued, only substantive post which he could join is B.Ed. Assistant's post" and that "he wrote a letter dated 28-5-1982 admitting that there was no other substantive post where he can join except the post of B.Ed. Assistant." It is further stated that the plaintiff completed handing over of the charge on 11-6-1980 and thereafter he was directed to work as B.Ed. Assistant, but he went on sick leave from 12-6-1980 to 12-8-1980 and he never reported to duty thereafter. Then he was informed by letter dated 25-8-1980 (Ex. A-12) that his absence without leave would be taken as unauthorised absence and action would be taken accordingly. On that basis, the defendants take the plea that the plaintiff is not entitled to claim any salary as he did not work and had voluntarily chosen to quit and abandon his post. They also deny that on account of friction or misunderstanding or due to any motivations the plaintiff was being victimised by the Board of Directors of the Shipyard. They also take the plea that the Joint Director of Higher Education was deliberately misled by the plaintiff and was made to believe that the services of the plaintiff were terminated in gross violation of the rules, while in fact the plaintiff himself expressed that he quit the post and wanted instructions as to whom he should hand over charge of the post of Principal of the Junior College. The Society preferred appeal against the order of the Joint Director of Higher Education and when the former tried to enforce his order on the Society, the Junior College approached this Court by way of Writ Petition No. 9578 of 1982. As the then Correspondent went on leave, P.W. 2 was nominated by the management of the Shipyard as Secretary and Correspondent of the Society making it clear that "all legal matters pending in Courts under the charge of Ex-Secretary will continue to be dealt with by Sri D.S.V. Subba Rao under the guidance of the President of the Society". In spite of the order of this Court dated 7-3-1983 in Writ Petition No. 9578 of 1982 directing the Director of Higher Education to dispose of the appeal preferred by the Society and pending the said appeal no action should be taken against the management for non-compliance with the order of the Joint Director, the Joint Director of Higher Education issued further proceedings directing the society to reinstate the plaintiff, and taking advantage of the same Sri Akella Krishna Murthy (P.W. 2) in league with the plaintiff went out of the way to pass orders reinstating the plaintiff as Principal. According to the Society, Sri Akella Krishna Murthy submitted his resignation on 1-6-1983 and the same was also accepted on 30-6-1983 and, therefore, the order of reinstatement issued by Sri Akella Krishna Murthy was on his own accord without reference to the managing committee of the Society. Even after his resignation was accepted, Sri A. Krishna Murthy continued to style himself as Secretary and Correspondent of the Society retaining custody of files of the Junior College unauthorisedly and illegally for the purpose of helping the plaintiff

with orders of reinstatement and retirement. The Society further alleged in its written statement that the plaintiff misappropriated and committed several acts of misconduct and cheated the Junior College and the Society for which he was charge sheeted and a departmental enquiry was conducted by one Sri. A. Subba Rao, Senior Engineer of Shipyard, who found him guilty of all the charges levelled against him and that, therefore, he was dismissed from service on 21-7-1983 and thus, he was never validly retired. The Society further denied that the plaintiff retired on 14-7-1983 because Sri A. Krishna Murthy was not the Secretary and Correspondent of the Society and the Junior College by that date and he had no authority to deal with the matters relating to the plaintiff. With those defences, the society sought the dismissal of the suit.

The following were the issues framed on 12-4-1988 finally :

"1. Whether the 2nd defendant is not under the control and management of the 1st defendant company and whether there was any agreement between the 1st defendant and the 2nd defendant that the 1st defendant agreed to finance the 2nd defendant for running the Educational Institution ?

2. Whether the plaintiff is entitled to claim the arrears of salary as per the statement of account ?

3. Whether the plaintiff voluntarily quit the post of the Principal or not?

4. Whether the plaintiff was dismissed from service or deemed to be in service till the age of superannuation?

5. Whether the plaintiff is entitled for reinstatement, pending disposal of appeal on the file of Director of Higher Education, as per the directions in Writ Petition No. 9578/82 on the file of Hon'ble High Court of A.P.?

6. Whether the defendants are barred from raising the issue regarding voluntarily quitting etc. by virtue of the provisions of Section 16 of the Act 11 of 1975 and on the principles of res judicata?

7. Whether the plaintiff is entitled to the suit amount? and

8. To what relief ?"

6. Plaintiff examined himself as P.W.I and Sri Akella Krishna Murthy as P.W. 2 and marked Exs. A-1 to A-30 . On behalf of the defendants, D.W.I was examined and Exs. B-1 to B-17 were marked; also were marked Exs. C-1 and C-2 and Exs. X-1 to X-3.

7. In his judgment dated 5-2-1990, the learned Principal Subordinate Judge held that the plaintiff voluntarily resigned from the post of Principal of the" Junior College relying on Ex. A-1, Ex. B-7 and Ex. B-8. The learned Principal Subordinate Judge further held that as the plaintiff himself had resigned the post of Principal on 30-4-1980 and the same was accepted and communicated to him under Ex. B-7 dated 3-5-1980, which was received by the plaintiff on 6-5-1980,

and as in Ex.B-8 the plaintiff himself stated that efforts would not be spared to hand over the charge expeditiously, the question of dismissal or removal of the plaintiff by the Society on the basis of any charges levelled against him did not arise and, therefore, no approval of the competent authority was necessary u/s 3 of the Andhra Pradesh Recognized Private Educational Institutions (Control) Act, 1975 ("the 1975 Act" for short). The learned Principal Subordinate Judge also held that in view of the plaintiff himself voluntarily quitting the office of the Principal, the question of admitting him as Principal, pursuant to the directions of the Joint Director of Higher Education dated 23-3-1981, did not arise and that Section 16 of the 1975 Act was no bar for the defence set up by the Society. The learned Principal Subordinate Judge further held that the reinstatement of the plaintiff as Principal by PW2 was not a valid one; as P.W.2 was not competent to reinstate him there was no question of P.W.I validly joining service once again as Principal and, therefore, preventing him from entering the premises was valid; and that retirement of the plaintiff as Principal on 14-7-1983 did not arise. He also rejected the contention advanced on behalf of the plaintiff that in fact he requested the management that he should be continued in the substantive post on the ground that when the substantive post itself was that of Principal of the Junior College, there was no question of the plaintiff continuing in the substantive post when he quit the post of Principal voluntarily under Ex. A-1. He further held that disciplinary proceedings were instituted against the plaintiff and he was removed from service. He also rejected the contention advanced on behalf of the plaintiff that the plaintiff was in service from 1-5-1980 to 14-7-1983. The learned Principal Subordinate Judge also found that as the plaintiff did not work as B.Ed. Assistant as ordered by the Society he was not entitled to any salary. Incidentally, he also found that the Society was not under the control or under the management of the Shipyard and that the Shipyard did not agree to finance the Society for running educational institutions. In the result, he dismissed the suit with costs.

8. The plaintiff questions the judgment and decree of the learned Principal Subordinate Judge mainly on the ground that his finding that the plaintiff voluntarily resigned from the post of Principal of Junior College is not correct on the facts and circumstances of the case. He submits that Ex.A-1 and Ex.B-1 both dated 30-4-1980 addressed by him to the Director of Higher Education and Secretary and Correspondent respectively were not correctly appreciated by the learned Principal Subordinate Judge, keeping in view the background for them. He also relies on the Control Act and the directions issued by the Joint Director of Higher Education and his reinstatement by P.W.2 and his retirement after reinstatement. He submits that the stand of the defendants that he was removed from service is without any basis and that his was a case of clear victimisation.

9. It is obvious that the main question involved in the suit is whether the plaintiff resigned and terminated his services as Principal of the Junior College voluntarily. Understandably, the arguments of the learned Counsel for the plaintiff (appellant in this appeal), Mr. N. Rammohan Rao, and of Mr. G. Suryanarayana Murthy,

appearing for the respondents, centered on this question.

10. Mr. N. Rammohan Rao submits that the material on record clearly discloses that the plaintiff did not resign from the post of Principal of the Junior College at any time, that the substantive post held by the plaintiff at the relevant time was that of Principal of the Junior College, that he did not, in fact, voluntarily quit as Principal and that he was forced to handover charge of his post by coercive methods that were adopted by the managing committee of the Society taking advantage of what he stated in his comments dated 30-4-1980 (Ex. B-1) to the Inspection Report of the Regional Inspecting Officer of Board of Intermediate Education at Rajahmundry, in spite of his protestations. He also submits that the material on record establishes that the plaintiff was vindictively treated because the management of the Shipyard was inimically disposed towards him. He further submits that the so called dismissal of the plaintiff was a further vindictive act meted to him and that the alleged dismissal is non est in law because there was no enquiry in the eye of law. No opportunity was given to the plaintiff, the enquiry report was not furnished to him and the principles of natural justice and the rules of fair play were flouted - all this assuming that there was really an order of removal, because according to him the stand of the defendants in this regard was inconsistent and contradictory and does not merit any credence. The learned Counsel also relies on the orders of the authorities of Education Department i.e., the Joint Director of Higher Education, the Director of Higher Education and the Government of Andhra Pradesh on the reports made by the plaintiff against the treatment meted to him, and the appeals and the revisions preferred by the defendants. On the other hand, Mr. G. Suryanarayana Murthy for the defendants/respondents submits that when the petitioner stated "I hereby quit the post of the Principal.....", it followed that he voluntarily resigned and that the managing committee of the Junior College correctly construed the statement of the plaintiff in his comments dated 30-4-1980 (Ex.B-1). He submits that under the circumstances there was no question of any force or coercion exercised by the managing committee on the plaintiff. He also relies on the endorsement (Ex. B-8) dated 3-5-1980 made by the plaintiff on Ex. B-7 dated 3-5-1980 communicating the decision of the managing committee accepting the decision of the plaintiff to quit and appointing V. Buchanna Panthulu to take over as Principal incharge. The learned Counsel also submits that when the plaintiff stated that he quit the post of Principal forthwith, there was no question of his continuing in that post on the ground that that was the substantive post being held by him at that time. In view of that, the managing committee of the Society required the plaintiff to continue only as B.Ed. Assistant which was the substantive post held by him prior to his appointment as Head Master of the High School before upgradation of that post as Principal of the Junior College and appointing the plaintiff as such after the Junior College was started. As regards the orders passed by the authorities of the Education Department and the Government of Andhra Pradesh, the learned counsel submits that there was no finality because the appeals and the revisions preferred by the Society are not

finally disposed of.

11. The question, therefore, is whether the plaintiff voluntarily resigned and whether the managing committee of the Society was justified and right in proceeding on the basis that the plaintiff voluntarily resigned from the post of Principal admittedly held by him and could not be allowed to retract subsequently from that position. The answer to this question depends upon the interpretation to be given to the statement of the plaintiff in his comments (Ex. B-1). This has been extracted by me earlier while dealing with the written statement of the Society. That has to be understood and interpreted in the context in which it was made.

12. The object of the comments of the plaintiff was the inspection report of the Regional Inspecting Officer of Board of Intermediate Education at Rajahmundry. The inspection report was about the administration of the Junior College. The inspection was made on 23-3-1980 (Sunday) and 24-3-1980 at a time when the plaintiff was on sick leave. The inspection report itself or a copy of it was not produced in evidence by the defendants. The plaintiff's stand is that inspection itself was managed by the then management of the Shipyard with a view to ease him out from the post of Principal of the Junior College. One of the introductory comments made by the plaintiff was that "the Correspondent of the College had even sanctioned and paid Rs. 100/- to the Vice-Principal asking him to accommodate the Inspecting Officer in any lodging house in the town with clear instructions to limit the whole expenditure including to and fro charges to Rs. 100/-", and that "for the reasons that may best be known only to the Correspondent, greater and questionable interest in getting the inspection of the College conducted, during the absence of the regular Principal when he was on leave, has been demonstrably evinced even by impermissible sanction of amount towards the same". I will deal with this aspect later.

13. It is the plea of the Society that its Correspondent and Secretary happened to receive a report from the Regional Inspecting Officer, and that the plaintiff was asked to comment on relevant portions of that report. One of the observations of the Regional Inspecting Officer was that the Principal should pay more attention towards the academic work. The plaintiff commented: "this is a very vague and wild statement and cannot be sustained by facts of specific nature. In the final analysis, the success of academic performance is established by the results achieved. The percentage of results is fairly good in spite of some of the constraints.....". Another observations was that "it was also gathered that the Principal comes to the College twice in a week". The plaintiff commented that this was yet another baseless conclusion of the Inspecting Officer, who, it was evident, was depending wholly and unquestioningly on hearsay and intended to tarnish the image of this established educational institution and its Principal. He added: "I humbly request for an open enquiry into this uncalled for allegation as also the conduct of the Inspecting Officer by the Director of Higher Education, Hyderabad, to whom a copy of these comments is being communicated". Yet

another observation made by the Regional Inspecting Officer was that the college was "in a deplorable condition." The plaintiff had taken umbrage at this comment and reacted as follows in his comment :

" To state that the college is in a deplorable condition is a deplorable piece of irresponsibility on any body's part. It can effortlessly be established that this college stands superior in several respects when compared with several other junior colleges in this district, if not in the State.

XXX XXXXX XXXXX The Correspondent who took charge in January, 1980 has been evincing growing interest in the day to day functioning of the College, while decision making in respect of policy guidelines has been increasingly relegated to a position of utter unimportance. The malady has been deliberately rendered more malignant by the recent nothings of the Correspondent of the college communicated to the Principal, only under acknowledgment. The approach of the Correspondent and a few members of G.E.S. (the Society) and the recent recrudescence of the malady convinced me that the culture pattern now prevailing in M/s. Hindustan Shipyard Ltd. has not spared this educational institution, I dearly served in the capacity of its head. I never yearned for a pat on the back. But, I am convinced that such deliberate demonstration of antipathy should not be the reward for my yeoman service rendered for a period of 19 years in this College/High School section with a record of achievements.

Fortunately or unfortunately distrust can be mutual. In view of the above, and also in view of the deliberate and planned efforts to undermine my stature gained by unsparing service, I hereby quit the post of the Principal of Hindustan Shipyard Jr. College till the findings of the open enquiry by the Director of Higher Education are known. Till then I will continue in my substantive post with immediate effect.

Instructions are solicited from the Correspondent as to whom he desires me to hand over the full charge of the College."

These comments (Ex. 13-1) were sent to the Correspondent and Secretary of the Society. The plaintiff also addressed letter dated 30-4-1980 to the Director of Higher Education (Ex. A-1) enclosing along with it a copy of Ex. B-1. Inter alia, he stated as follows in Ex; A-1:

"The said "inspection report " of the Regional Inspecting Officer, Rajahmundry suffers from the following defects of a serious and partisan nature.

1. The Regional Inspecting Officer has unlawfully accepted the hosting by certain persons of the Grandhigram Education Society inimically disposed towards me.
2. The Regional Inspecting Officer deliberately chose to deviate from the norms for inspection laid down in the Inspection Code.
3. The Regional Inspecting Officer chose to conduct the so-called inspection during my absence due to my sick leave despite our advice against such a

procedure.

4. The Regional Inspecting Officer made defamatory remarks about my attendance in the Junior College based purely on hearsay.

5. The Regional Inspecting Officer conducted the so called inspection without caring to refer to documentary and other facts.

In view of the above, I request you kindly to institute an enquiry forthwith into the conduct of the Regional Inspecting Officer and his so-called inspecting report and establish truth, as otherwise, certain vested interests that chose to lodge him and host him may disrupt the functioning and tarnish the image of the Hindustan Shipyard Junior College and the under-signed who dearly served it for about two decades since its high school stage onwards.

I request that immediate action may kindly be taken against the erring Regional Inspecting Officer so that this educational institution may avail its only chance for survival in a beneficial manner."

14. It is the case of the Society that Ex. 13-1 was received by the Correspondent and Secretary of the Society when the meeting of the managing committee was going on the very same day i.e., on 30-4-1980. The minutes of the proceedings of 30-4-1980 of the managing committee were marked as Ex. B-6. The relevant portion reads as follows :

"Sri A. Venkateswara Rao, Regional Inspection Officer, Board of Intermediate Education inspected the Hindustan Shipyard Junior College on 23-3-80 and 24-3-80 and sent his inspection report dated 12-4-80 to the President, Candhigram Education Society. The relevant excerpts from the Inspection report were sent to Sri V. Parvateesam, Principal, H.S. Jr. College on 18-4-80 for his comments. The Principal forwarded the comments on 30-4-80 to the Committee while the Gandhigram Educational Society Committee was going on. He mentioned in his above comments that he was seeking an open enquiry into certain allegations made against him by the Inspection Officer, Board of Intermediate Education and also on the conduct of the Inspection Officer by the Director of Higher Education, Hyderabad to whom a copy of the comments were stated to be separately being communicated by him. The Principal further stated that he quit the post of Principal of Hindustan Shipyard Junior College forthwith and would continue in his substantive post till the findings of the open enquiry requested by him to be conducted by the Director of Higher Education are known. The Principal further sought instructions from the correspondent as to whom he desires to hand over the full charge of the college.

The Grandhigram Educational Society examined the above request of the Principal and unanimously resolved as under :

(1) Resolved to accept the unilateral and voluntary action taken by Sri V. Parvateesam, Principal, M.S. Jr. College to quit the post of the Principal of H.S. Jr. College with immediate effect and to allow him until further orders to continue in

his substantive post.

(2) Resolved in the above circumstances that Sri. V. Parvateesam should hand over charge to Sri V. Buchanna Panthulu, the senior most junior lecturer immediately who will take over as Principal in-charge and shall hold the post until further orders from the Committee. Proper handing over and taking over reports are to be obtained by the Correspondent.

(3) And further resolved that the above change of Principal incharge of the Jr. College to be communicated to Banks and all concerned."

15. Pursuant to the resolution of the managing committee, office order dated 1-5-1980 (marked as Ex. A-6) was issued to the plaintiff stating that the plaintiff "informed the Managing Council of Gandhigram Educational Society on 30-4-80 that he quit the post of Principal with effect from 30-4-1980", and that Sri V. Buchanna Panthulu, Junior Lecturer will take full charge of the junior college from the plaintiff with effect from 1-5-1980 and shall hold the post as Principal incharge until further orders from the Committee. The office order further stated as follows :

"Proper handing over and taking over of charge should take place and the necessary report rendered by them immediately.

Shri V. Parvateesam is allowed to continue in his substantive post until further orders ".

According to the plaintiff he received this office order on 6-5-1980 along with a covering letter dated 3-5-1980 (marked as Ex. B-3). A copy of that covering letter was also marked as Ex. B-7. The plaintiff's endorsement there on dated 6-5-1980 was marked as Ex. B-8. It reads as follows:

"Received copy on 6-5-1980 at 12.45 p.m. Efforts will not be spared to hand over the charge expeditiously. Still I may take a little time since concerned teachers are to be summoned to be present for attending the work. Also detailed lists are to be prepared after due verification. Also the office staff will partly be busy in the conduct of examinations. However it will be expedited and arrange for making available the detailed charge lists as early as possible".

The covering letter itself, marked as Ex. B-3 (copy of which is Ex. B-7), reads as follows :

"This has reference to your comments dated 30-4-80 on the Inspection Report of the Inspecting Officer, Board of Intermediate Education. This was received when the Committee meeting of the Gandhigram Educational Society was going on. The Committee noted that you had quit the post of Principal forth with and therefore nominated Sri V. Buchanna Panthulu to take over as Principal-in-charge until further orders. An Office Order was issued to that effect on 2-5-80 which was handed over to Shri V. Buchanna Panthulu, Principal-in-charge to take over full charge from you. A copy of the Office Order is once again sent herewith for

your information and for handing over the charge to Shri V. Buchanna Panthulu immediately."

But, the petitioner did not hand over charge thereafter. On the other hand, he addressed letter dated 19-5-1980 (marked as Ex. B-2) to the Correspondent of the Junior College referring to the Office Order dated 1-5-1980 served on him on 6-5-1980. Therein, he pointed out that in his comments (Ex. B-1) he stated that he "would quit the post of the Principal with immediate effect till the findings of the open enquiry by the Director of Higher Education are made known", and that till then he would continue in his substantive post.

Thereafter, he reacted as follows:

"But most surprisingly, your office order is deliberately silent about one of the above conditions stipulated by me. Secondly, the second condition that I would be allowed to be continued in my substantive post is not executable and hence inoperative. This is in view of the fact that since I have been working as the Principal for the last eight (8) years, my substantive post ceased to be in existence, as is learnt from the office of the D.E.O, Visakhapatnam subsequently. Further it is learnt that you are pleased to ascertain this fact from the office of the D.E.O., Visakhapatnam and you have chosen for reasons best known to you, maintained silence over this fact too.

Hence your office order under reference is inoperative, void and hence not maintainable. And as such status quo ante prevails and I remain the Principal of Hindustan Shipyard Junior College. I have been availing summer vacation and Shri V.B. Panthulu will be incharge of the College, conduct the examinations as Chief Superintendent and accept the remuneration specially assigned for the same".

A copy of Ex. B-2 was also submitted to the District Educational Officer, Visakhapatnam with a request to advise the Correspondent suitably. In reply, the Correspondent and Secretary of the Society issued letter dated 27-5-1980 (marked as Ex. A-7) to the plaintiff pointing out that the plaintiff had not handed over charge to Sri V.B. Panthulu in accordance with the office order dated 1-5-1980 and in compliance of his statement dated 6-5-1980 (Ex. B-8), and that the managing committee of the Society examined the contentions raised by him in his letter Ex. B-2 and was of the opinion that his contentions were untenable and unacceptable. The letter proceeded further as follows:

"As it is understood that Sri V. B. Panthulu is out of station, the Committee authorises Sri S.N. Hussain, Jr. Lecturer to take charge of the post of Principal-in-charge. You are accordingly directed to hand over charge before 12 noon on 28-5-1980 to Sri S.N. Hussain and any failure to comply with the orders of the Managing Committee of Gandhigram Educational Society shall be treated as insubordination and defiance of lawful orders of the Committee and you will hold yourself solely responsible for any action taken in this regard",

The resolution (Ex. B-9) of the committee at that meeting in so far as it related to the plaintiff was virtually reproduced in Ex. A-7 except the following:

"In case there is. non-compliance of the above orders of the Committee by Sri. Parvateesam, the Secretary is empowered to deal appropriately as he deems fit including keeping him under suspension and to report the action taken by him to the Committee at the earliest".

Thereafter, the plaintiff handed over charge on 28-5-1980 pursuant to Ex.A-7 and signed the charge handing over and taking over report (Ex.A-8) which was also signed by S.N. Hussain. Certified copy of the full charge list was marked as Ex. A-9. Thereafter, the plaintiff addressed letter dated 13-8-1980 to the Correspondent (marked as Ex. A-10) referring to the previous correspondence and office orders and his leave letter dated 19-6-1980 and telegram dated 28-7-1980 stating that he applied for sanction of leave from 12-6-1980 to 12-8-1980, and that he was medically fit to join duty with effect from 13-8-1980 and adding as follows :

"So I request you kindly to give me orders posting me as Principal of the College, since it is reliably learnt that Principal's post only is my substantive post as has already been explained in my letter dt. 19-5-80 cited above and since I have handed over charge as required by you in your letter dt. 27-5-1980.

On receiving orders from you to the effect that I am posted as Principal of the college, which alone is my substantive post, I express my readiness to join duty immediately.

Early communication is solicited. Communication may please be sent to my address given below."

The Correspondent and Secretary of the Society replied by letter dated 25-8-1980 (marked as Ex. A-12). He replied inter alia, as follows:

"Consequent on your reversion from Principal Post, you are to work as B.Ed. Assistant and an Internal Note to this effect was already issued on 12-6-80, a copy of which is enclosed for your information. If you have any grievance in this regard the proper manner is to ventilate your grievance after assuming duty to either the Correspondent, G.E.S. or to appeal to the Director of Secondary Education if you are not satisfied with the decision of the Correspondent. Instead of following the above systematic procedure, you chose to abstain from duty on your own accord even after being fit for duty from 13-8-80.

In the absence of any leave application from you from 13th August, 1980, you will be deemed on unauthorised absence from 13-8-80 and appropriate action will be taken against you as per Government Rules."

16. In his evidence as P.W.I, the plaintiff stated in his examination-in- Chief that the Correspondent did not choose to inform him what his substantive post would be if his contention that the Principal's Post itself was his substantive post was

not accepted. He pointed out that Ex. A-7 was also silent on this. He also stated as follows:

"On 28-5-80, I went to Shipyard with a desire to make a representation to the Chairman and Managing Director of H.S. Ltd. I was sitting in the chambers of the President of the Managing Committee before I was seeking appointment with C & MD. But, to my surprise the President of the Committee received a telephone call to the effect whether the Principal of the College had handed over charge within 24 hours as required by them and as was communicated in their letter dt. 27-5-80. Thereupon, immediately I wrote a letter addressed to the Correspondent wherein I stated that I could ill-afford to be indisciplined as Head of an Educational Institution. So saying immediately I handed over the outer keys of the College and asked the office staff to prepare a detailed charge list for handing over the charge. By 10-6-80, office staff could prepare the charge lists in detail as instructed by me and I handed over the charge to the college in full. As on 11-6-80, no charge whatsoever was ever framed against me nor any objection raised at the time when charge was handed over by the one to whom I had handed over the charge. On 12-6-80 I did not go to the college. But that day, in the evening I was informed that several of the registers, records, vouchers files etc. were reported to have been lifted from the College premises and they were all taken to inside the Shipyard campus. Having found that the approach of the Correspondent was bad in practice, the next day that was on 13-6-80, I applied for sick leave for two months w.e.f. 12-6-80. I received no communication from the Correspondent nor the sick leave I applied was sanctioned nor any salary paid to me since 1-5-80. Having not received any communication from the Correspondent of the college, I submitted a petition on 28-7-80 to the Joint Director of Higher Education, A.P. Hyderabad who is also the competent authority under rules. On 21-8-80, Joint Director of Higher Education and competent authority gave orders directing the correspondent of the College to restore me to duty forthwith as Principal of the College and also a copy of the said order was marked to me. I approached the Correspondent of the College after the expiry of the sick leave. I had applied for to take me back to duty as Principal of the College. On 25-8-80, the Correspondent of the College informed me that he had already reverted me as B.Ed. Assistant and an internal note has already been given on 12-6-80 itself. This was the 1st letter I received from Correspondent wherein he was pleased to tell me what my substantive post would be for which he had agreed earlier to continue me in his orders. I submitted that in view of the orders of the competent authority dt. 21-8-80 it is already clarified that I should be continued as Principal of the College itself but no other post could be my substantive post. In the light of these proceedings, the correspondent's approach was considered by me bad in law. Therefore, I did not report to duty since I never wanted to serve in a post offered to me by way of gratis without any respect to Government rules with which aided Junior Colleges are governed".

In cross-examination, it was suggested to the plaintiff that the post of Head

Master was abolished after the High School was upgraded as Junior College. In his cross-examination he stated as follows:

"In my comments, I reported that I hereby quit the post of Principal till the findings of the open enquiry by the Director of Higher Education are known, till then I will continue in my substantive post of Head Master. I also requested the D2 Correspondent to whom I should hand over the charge. I made my comments voluntarily and willingly. The Managing Committee accepted my resignation as Principal and I continued in my substantive post as a Head Master. I received the communication of the managing committee allowing to quit the post of Principal and to continue as Head Master on 6-5-80. I did not hand over charge of Principal on 6-5-80. It is not true to say that there is no substantive post of Head Master as I was appointed as Principal of Junior College. While accepting the Principalship of Junior College, I did not reserve any lien over the instant (Assistant?) or Head Master of the High School. On my appointment as Principal till 6-5-80, nobody was appointed as Head Master of the High School. There is no post of Head Master in the Junior College after the High School was upgraded.... I handed over charge to Hussain on 28-5-80. It is not true to say that the Management asked me to join as B.Ed. Assistant. The Management defined the substantive post of mine as B.Ed. Assistant after my appeal was disposed of by the competent authority. I completely handed over the charge to Hussain on 11-6-80. I went on leave from 12-6-80 for two months. The Managing Committee did not define my substantive post. Hence, I did not join."

P.W. 2 was not in charge of the affairs of the Junior College or the Society at that time. D.W.I was the Correspondent and Secretary of the Society from 1-2-1980 to 24-3-1983 i.e., during this period. He states in his examination in chief that "the managing committee discussed the comments of the plaintiff and resolved to accept the resignation of the plaintiff". He further states that the plaintiff agreed to handover the charge to S.N. Hussain on 11-6-1980, and that the managing committee informed the plaintiff to join himself as B.Ed. Assistant as the substantive post was the B.Ed. post and that the plaintiff did not join as B.Ed. Assistant. In his cross-examination, he stated that the report of the Regional Inspector was not given to the plaintiff in its entirety but only a part of it was given to him and himself and the President selected the matter out of the report of the Regional Inspector. He further stated as follows:

"It is not true to say that the plaintiff resigned to the post of Principal on condition that an open enquiry will be conducted against the Regional Inspector, Rajahmundry. It is not true to say that the substantive post of the plaintiff was the post of Principal itself. The plaintiff is the permanent Head Master of the High School.

Under Exs. A-6 and A-7 the substantive post of the plaintiff is not indicated. It is not true to say that the District Educational Officer, Visakhapatnam informed us that the plaintiff's substantive post is the Principal itself. The Plaintiff claimed under Ex. B-2 his substantive post is Principal. The defendants gave a reply to

Ex. B-2. The reply to Ex.B-2 is not filed into Court. It is not true to say that as Buchanna Panthulu did not agree to the conspiracy made by the defendants to take charge from the plaintiff and that we requested the plaintiff to hand over charge to Hussain. On 21-8-80 the Joint Director of Higher Education directed the defendant to take the plaintiff as Principal. It is not true to say that the plaintiff was not informed earlier to 21-8-80 that the substantive, post of the plaintiff was B.Ed. Assistant. I have not filed any document to show informing the plaintiff prior to 21-8-80 that his substantive post is B.Ed. Assistant".

17. To complete this part of the narration, it has also to be noticed that a copy of the plaintiff's petition dated 28-7-1980 to the Director of Higher Education, referred to by him in his evidence, was marked as Ex. A-13. In that he complained about the action meted out to him by the management of the Society in insisting on and forcing his handing over charge of the post of Principal of the Junior College threatening disciplinary action otherwise. In his comments to the inspection report, he added a note as follows:

"....that I am prepared to step down for a time till any official enquiry is held by your department and the management is satisfied about my integrity and ability as an administrator of the college with a strength of about 1600 students".

He further stated that he was permitted to revert to his substantive post "i.e., the post of the Head Master of Secondary School ". He also pointed out that he was working as Principal for the Junior College from the year 1972, and that earlier he was Head Master of the upgraded High School from 1965. He also enclosed extracts from the previous inspection reports wherein he was commended for the quality of instruction and discipline maintained in the junior college. He added that there was no Head Master post existing in the Junior College to accommodate him and requested the Director of Higher Education to direct the Correspondent of the Junior College to restore him immediately to the post of Principal. By proceedings dated 21-8-1980 (copy marked as Ex. A-14), the Joint Director of Higher Education required the Correspondent of the Junior College to offer detailed remarks on the representation of the plaintiff. The Correspondent and Secretary of the Society replied by letter dated 2-9-1980 taking the stand that the plaintiff was not terminated by them but he had voluntarily relinquished the post. Thereafter, the Joint Director of Higher Education by letter dated 30-9-1980 (copy marked as Ex. A-15) asked the plaintiff to submit his reply. After receiving the reply of the plaintiff dated 7-10-1980 and also letter dated 15-10-1980 from the Correspondent and Secretary of the Society, the Joint Director of Higher Education in his proceedings dated 23-1-1981 (copy marked as Ex. A-16) addressed the Correspondent and Secretary of the Society as follows:

"The Principal has stated that he informed the Secretary, G.E.S. that he would quit the post of Principal of Hindustan Shipyard Junior College till the findings of the open enquiry by the Director of Higher Education are known and till then he would continue in his substantive post.

In this connection the Secretary and Correspondent of the college is informed that both the defensive statement of Sri V. Parvateesam and the remarks furnished by the correspondent are examined, After due examination of all the facts, it is decided that the. management of the college may conduct necessary enquiry against Sri, V. Parvateesam if they so desire. Since quitting of the post of Sri V. Parvateesam is not voluntary but subject to the result of the enquiry by Director of Higher Education and reversion to substantive post the above two conditions cannot be fulfilled in as much as no enquiry is contemplated by this office and there is not post of Head Master as the High School was upgraded as Junior College.

The Secretary and Correspondent of the Junior College is, therefore, requested to admit Sri V. Parvateesam to join duty as Principal without prejudice to the disciplinary proceedings instituted against him by the management."

18. After examining the sequence of events beginning with Ex. B-1 wherein the plaintiff stated that he quit the post of Principal, ending with Ex. B-9 and Ex. A-7, both dated 27-5-1980, and the plaintiff handing over formal charge on 28-5-1980 to S. N. Hussain, I find that the management of the Junior College was not justified in forcing the plaintiff to hand over charge (Ex.B-9 resolution and Ex.A-7 dated 27-5-1980) and that he was prevented from joining duty as Principal and kept out of his substantive post contrary to law and high handedly.

19. I am not persuaded to construe the noting of the plaintiff in Ex. B-1 at the end of his comments that he was quitting the post of Principal "till the findings of the open enquiry by the Director of Higher Education are known" and that till then he would continue in his substantive post, as his "resignation" from the post of Principal. Apart form the fact that he had not used the expression "resign", there cannot be "resignation" from a post for a certain period i.e., till the findings of the open enquiry, as sought by him. When an employee resigns, he terminates or puts an end to his service and the relationship of the employer and employee ceases; there can be no continuance in service or coming back into service after resignation is effectuated. In Union of India (UOI) and Others Vs. Gopal Chandra Misra and Others, , a Constitution Bench of the Supreme Court speaking through Sarkaria, J. dealt with the connotation of expression "resign his office" in proviso (a) to Article 217 (1) dealing with resignation by High Court Judges. After referring to the dictionary meanings of the word "resignation", the Supreme Court held as follows:

"In the general juristic sense, also, the meaning of "resigning office" is not different. There also, as a rule, both, the intention to give up or relinquish the office and the concomitant act of its relinquishment, are necessary to constitute a complete and operative resignation (See, e.g. American Jurisprudence, Second Edn., Vol. 15A, Page 80), although the act of relinquishment may take different forms or assume a unilateral or bilateral character, depending on the nature of the office and the conditions governing it. Thus, resigning office necessarily involves relinquishment of the office, which implies cessation or termination of,

or cutting as under from the office. Indeed, the completion of the resignation and the vacation of the office, are the casual and effectual aspects of one and the same event."

To the same effect is the decision of the Supreme Court in J.K. Cotton Spinning and Weaving Mills Company Ltd. Vs. State of U.P. and Others, . The Supreme Court held as follows:

"Therefore, one of the ways of terminating the contract of employment is resignation. If an employee makes his intention to resign his job known to the employer and the latter accepts the resignation, the contract of employment comes to an end and with it stands severed the employer- employee relationship. Under the common law the resignation is not complete until it is accepted by the proper authority and before such acceptance an employee can change his mind and withdraw the resignation but once the resignation is accepted the contract comes to an end and the relationship of master and servant stands snapped.....If an employee takes the initiative and exercises his right to put an end to the contract of service and the employer merely assents to it, it cannot be said that the employer has terminated the employment. In such cases the employer is merely acceding to the employee's request, may be even reluctantly. Here the employee's role is active while the employer's role is passive and formal..... A formal acceptance of the employee's desire by the employer cannot mean that it is the employer who is putting an end to the contract of employment".

The Supreme Court further added that " there can be no doubt that a resignation must be voluntarily tendered for if it is tendered on account of duress or coercion, it ceases to be a voluntary act of the employee expressing a desire to quit service.....". After referring to the dictionary meanings, the Supreme Court further observed : " From the aforesaid dictionary meanings it becomes clear that when an employee resigns his office, he formally relinquishes or withdraws from his office. It implies that he has taken a mental decision to sever his relationship with his employer and thereby put an end to the contract of service". That resignation should be voluntary is further stressed in Punjab National Bank Vs. P.K. Mittal, . The Supreme Court has reiterated in that case that resignation is a voluntary act of an employee, and that it should be accepted in the terms in which it is offered and that the employer cannot force a date of termination on the employee other than the one he chose, In that connection, the Supreme Court further observed as follows:

"It is common knowledge that a person proposing to resign often wavers in this decision and even in a case where he has taken a firm decision to resign, he may not be ready to go out immediately. In most cases he would need a period of adjustment and hence like to defer the actual date of relief from duties for a few months for various personal reasons."

In Moti Ram Vs. Param Dev and another, , the Supreme Court further clarified, after referring to the earlier decisions, as follows:

"As pointed out by this Court, "resignation" means the spontaneous relinquishment of one's own right and in relation to an office, it connotes the act of giving up or relinquishing the office. It has been held that in the general juristic sense, in order to constitute a complete and operative resignation there must be the intention to give up or relinquish the office and the concomitant act of its relinquishment. It has also been observed that the act of relinquishment may take different forms or assume a unilateral or bilateral character, depending on the nature of the office and the conditions governing it.....A resignation may also be prospective to be operative from a future date and in that event it would take effect from the date indicated therein and not from the date of communication. In cases where the act of relinquishment is of a bilateral character, the communication of the intention to relinquish, by itself, would not be sufficient to result in relinquishment of the office and some action is required to be taken on such communication of the intention to relinquish, e.g., acceptance of the said request to relinquish the office, and in such a case the relinquishment does not become effective or operative till such action is taken. As to whether the act of relinquishment of an office is unilateral or bilateral in character would depend upon the nature of the office and the conditions governing it.

XXX XXX XXX A contract of employment, however, stands on a different footing wherein the act of relinquishment is of bilateral character and resignation of an employee is effective only on acceptance of the same by the employer".

Thus, when an employee resigns voluntarily, he terminates his service on his own accord; though acceptance by the employer of such resignation is necessary to effectuate the voluntary resignation, such acceptance is only a formal one and the employer's role remains passive. Upon such acceptance, the employer-employee relationship is sundered and there can be no continuance of the relationship or the service of the employee. For there to be valid resignation, the intention to sever the relationship of employer- employee must be clearly expressed. Applying these tests to the facts of the present case, I am satisfied that the plaintiff had no intention to snap the relationship of employer-employee and of permanently vacating the post of Principal which he held for the past 8 years. He expressed - " I hereby quit the post of the Principal.... till the findings of the open enquiry by the Director of Higher Education are known" - which could only mean that he wanted to move out of the chair of Principal for the time being during the pendency of the open enquiry which he requested the Director of Higher Education to hold. He did not stop there; he further stated : "Till then I will continue in my substantive post with immediate effect". From this, it is obvious that the plaintiff did not want to snap his service with the Junior College. It cannot be disputed that the substantive post held by the plaintiff at that time was that of the Principal of the Junior College. This was admitted by D.W.I, who was the then Correspondent of the Junior College and the Secretary of the Society. He stated in examination-in chief that the plaintiff was appointed as Principal of the Junior College in 1972 and that the State Government finally

gave exemption to him for continuing as Principal. He also stated that the said post was admitted to the aid by the Government. In the context, therefore, the expression "quit" used by the plaintiff has to be interpreted to mean only as a temporary stepping out of the office of Principal to facilitate open enquiry by the Director of Higher Education sought in his letter (Ex.A-1) to the Director of Higher Education. The managing committee of the Society in its resolution Ex. B-6 of 30-4-1980 adopted the language of the plaintiff in part, omitting the crucial words "till the findings of the open enquiry by the Director of Higher Education are known", which throw light on the real intention of the plaintiff i.e., that he would vacate the seat of Principal for the time being till the result of open enquiry was known and not that he would terminate his employment as Principal. This was also obvious from the fact that he would continue in his substantive post which was that of Principal at that time and no other post. Both in the resolution in Ex. B-6 and in the office order in Ex. A-6, this aspect was made clear by expressly stating that the plaintiff was "allowed to continue in the substantive post until further orders" - nowhere the word "resign" was used in Ex. A-6. Position was the same in Ex. B-3 and B-7. Under the circumstances, even though the defendants wished it so, the plaintiff's statement that he would quit the post till the findings of the open enquiry were known cannot be construed as resignation from the post of Principal by the plaintiff. Therefore, I am clearly of the view that the defendants were not right in treating what the plaintiff stated at the end of his comments in Ex.B-1 as tendering "voluntary and unilateral resignation of the Principal of the College". In the result, I find that the learned Subordinate Judge was not right in holding that the plaintiff voluntarily resigned from the post of Principal of the Junior College on 30-4-1980 and that the same was accepted and communicated to the plaintiff under Ex. B-3 (Ex. B-7) read with Ex. A-6.

20. The learned counsel for the respondents (defendants) relies on a stray statement of the plaintiff as recorded in his cross-examination: "the Managing Committee accepted my resignation as Principal and I continued in my substantive post as a Head Master ". It is obvious that the word "resignation" there was part of the question put to the plaintiff. Just before that the plaintiff stated in the cross-examination that in his comments he reported that the "hereby quit the post of Principal till the findings of the open enquiry of the Director of Higher Education are known till then I will continue in my substantive post of Head Master". The words "of Head Master" were not in Ex.B-1 or Ex.A-1. The evidence given by the plaintiff after nearly eight and half years cannot alter the position seen from the documents and the contemporaneous conduct of the plaintiff. The management of the Society also did not terminate the services of the plaintiff by accepting his so called resignation. The management callously sought to reduce the plaintiff to the rank of B.Ed. Assistant which he was before he was promoted as Head Master of the School in 1965 (after four years of service as B.Ed. Assistant); that means, to what he was before a decade and half; that too after forcing him to vacate the post of Principal of the Junior

College threatening him with dire consequences.

21. Though the plaintiff stated that he "hereby quit the post of the Principal" of the Junior College on 30-4-1980 in Ex. B-1, the evidence on record clearly establishes that he did not, in fact, relinquish or abandon the post with immediate effect. That is also obvious from the fact that he sought instructions from the Correspondent to name the person to whom he should hand over full charge of the college. Though the management of the Society passed a resolution at its meeting on 30-4-1980 itself in Ex. B-6 and the office order in Ex. A-6 was issued pursuant to the same and the plaintiff endorsed on Ex. B-7 on 6-5-1980 that efforts would not be spared to hand over charge expeditiously (Ex. B-8), it is the undisputed fact that he did not hand over charge thereafter to Sri V. Buchanna Panthulu. On the other hand, the plaintiff addressed Ex. B-2 letter dated 19-5-1980 pointing out that he specifically stated that he would quit the post till the findings of the open enquiry by the Director of Higher Education were made known and that till then he would continue in his substantive post, and that the substantive post was that of Principal only and that, therefore, the status quo would prevail, and that he remained as Principal of the Junior College and that he would be availing summer vacation and meanwhile Sri V. Buchanna Panthulu would be in charge of the College. Reaction of the management of the Society was passing the resolution (Ex. B-9) followed by Ex. A-7 letter dated 27-5-1980 pinning down the plaintiff to quit the post and directing him to hand over charge before 12 noon on 28-5-1980 to Sri S.N. Hussain and warning him that if he failed to do so his conduct "would be treated as insubordination and defiance of lawful orders of the Committee". In his evidence, the plaintiff stated that he wanted to explain the matter to the President of the Society and also to the Chairman and Managing Director of the Shipyard, but that the issue was foreclosed because when he was in the room of the President waiting for interview with the Chairman, there was a telephone call to the President enquiring whether the Principal of the College had handed over charge-presumably from Chairman himself.

22. Are the orders of the managing committee of the Society and the consequential letters of the Correspondent of the Junior College forcing the plaintiff to hand over charge to Sri. S.N. Hussain lawful?. I am of the view that they are not. Firstly, the management of the Junior College wrongly proceeded on the basis that the plaintiff resigned from the post of Principal. I have already dealt with that aspect of the matter. Secondly, the management proceeded on the fiction that the plaintiff already quit the post when, in fact, he was continuing as Principal. The management sought to justify its action on the basis that the plaintiff stated " I hereby quit" and not" I would quit". In the written statement filed by the society, the plea taken is that there is a difference between the two : "The first one means he took a positive action which is complete and concluded i.e., he confirmed by his request by seeking instructions as to whom he has to handover charge of the Principalship. He purposely misrepresented to the Joint Director of Higher Education to use different words to mean that he had intention

to quit his post." The fact was that though the plaintiff stated on paper that he "hereby quit", he did not abandon the post and walkout; he continued as Principal and performed the functions of Principal. He did not hand over charge till he was forced to do so: I have already dealt with this aspect also.

23. The next thing to be noticed is that the management did not state in any of its resolutions - Ex, 13-6 dated 30-4-1980, Ex.B-9 dated 27-5-1980 and in Ex. B-14 dated 21-7-1980 - what his substantive post was though he was allowed "to continue in his substantive post". The plaintiff should know in what post he should continue when he was asked to hand over charge as Principal, if he was allowed to continue in his substantive post and his substantive post was other than that of Principal. It has already been seen that his substantive post could not have been other than that of Principal. The evidence on record establishes that the plaintiff was never told what his substantive post was. Even in Ex. A-12 letter dated 25-8-1980 of the Secretary and Correspondent, he was not told what his substantive post was. That issue was side tracked by stating as follows:

"Consequent on your reversion from Principal Post, you are to work as B.Ed. Assistant and an Internal Note to this effect was already issued on 12-6-80, a copy of which is enclosed for your information."

This brings out what the management, in fact, did and that it knew what it did i.e., to revert the plaintiff from the post of Principal to work as B.Ed. Assistant.

24. In the written statement a plea was taken that the only substantive post which the plaintiff could join was B.Ed. Assistant's post and that "he wrote a letter dt. 28-5-82 admitting that there was no other substantive post where he can join except the post of a B.Ed. Assistant.....". But, no such letter dated 28-5-1982 written by the plaintiff was produced or marked and no evidence has been adduced to establish that the plaintiff admitted so. D.W.I in his examination-in-chief stated that "the managing committee informed the plaintiff to join himself as B.Ed. Assistant as the substantive post was the B.Ed. Post". In his cross-examination, he denied that the substantive post of the plaintiff was the post of Principal itself; however he admitted that the plaintiff was the permanent Head Master of the High School. He also accepted that under Exs. A-6 and A-7 dated 1-5-1980 and 27-5-1980 respectively, the substantive post of the plaintiff was not indicated. He stated that the plaintiff claimed under Ex. B-2 that his substantive post was that of Principal, and that the defendants gave a reply to Ex.B-2 but the said reply was not filed into Court. He denied that the plaintiff was not informed earlier to 21-8-1980 that his substantive post was that of B.Ed. Assistant but did not file any document to establish the same. Thus, no material whatsoever has been placed to establish that in 1980 the substantive post of the plaintiff was that of B.Ed. Assistant. On the other hand, Ex.A-12 letter dated 25-8-1980 establishes that the plaintiff was reverted from his substantive post of Principal to the post of B.Ed. Assistant which he held from 1961 to 1965 i.e., before he was promoted as Head Master of the High School. This is on the face of it unfair and unjustifiable treatment meted to the plaintiff. The respondents have

no defence for it. The management of the Society demoted and reduced the plaintiff to the last rank contrary to law and without any authority of law. Under the circumstances, I am of the view that the plaintiff cannot be faulted for not joining as B.Ed. Assistant and submitting himself to that humiliation.

25. It has also to be noticed that it is not the case of the management of the Society that the Director of Higher Education initiated or proposed to initiate any open enquiry as requested by the plaintiff in Ex. A-1 or that any information was sought by them from the Director of Higher Education in that regard and that they were awaiting any such information. At any rate, all doubts in that regard, if any, must have been dispelled by Ex. A-16 proceedings dated 23-1-1981 of the Director of Higher Education wherein he stated in categorical terms that no enquiry was contemplated by his office and that there was no post of Head Master as the High School was upgraded as Junior College and requested the Secretary and Correspondent of the Junior College to admit the plaintiff to join duty as Principal and made it clear that the management may initiate disciplinary proceedings against him if they so desired. In the circumstances, I have to hold that the plaintiff was forced to hand over charge as Principal and that his quitting of the post was not voluntary, and that the management of the Society and the Correspondent and Secretary of the Junior College illegally kept him out of that post. Their action in reducing the rank of the petitioner to that of B.Ed. Assistant is contrary to law and in violation of sub-section (1) of Section 3 of the Control Act. That sub-section mandates that "no teacher employed in any private educational institution shall be dismissed, removed or reduced in rank nor shall his appointment be otherwise terminated, except with the prior approval of the competent authority; Provided that if any educational management, agency or institution contravenes the provisions of this sub-section, the teacher affected shall be deemed to be in service". It is not in dispute that the management of the Society, which was managing the Junior College, did not obtain any prior approval of the competent authority in the present case before reducing the rank of the plaintiff to that of B.Ed. Assistant. Under the circumstances, by operation of law, the plaintiff must be deemed to be continuing as Principal of the Junior College even after 30-4-1980 and 28-5-1980 when he was forced to hand over charge of the post to Sri S.N. Hussain. The evidence in this case also discloses that the plaintiff was under psychological stress when he gave his comments on 30-4-1980 because of, what he perceived as, inimical disposition of the new Managing Committee of the Society and the Chairman and Managing Director of the Shipyard towards him. In his evidence plaintiff states that the new Managing Committee of the Society was nominated by the Chairman and Managing Director of The Shipyard in the last week of January, 1980 and from then onwards hurdles were created in the functioning of the Junior College by certain vested interests. He stated that he took the matter to the notice of the President and Secretary, and that they informed him without any ambiguity that he "courted the displeasure of the Higher Ups of H.S. Ltd., and that they were not in a position to set the matters right" and that to avoid the displeasure and to

remain himself free from harassment, he went on sick leave for one month i.e., from 12-3-1980 to 10-4-1980. D.W.I stated that he worked as Secretary and Correspondent of the Junior College from 1-2-1980 and that at that time he was working as Deputy Manager, Personnel Department in the Shipyard. When the Regional Inspection Officer inspected the Junior College on 23/24-3-1980, the plaintiff was on leave. He admitted in his cross-examination that he did not know personally the affairs of the Society prior to 1-2-1980. He also stated in his cross-examination that the Shipyard's Chairman-cum- Managing Director would decide who would be appointed as Secretary and Correspondent of the Society, and that he could appoint any one to that post and remove him at his pleasure. He stated that by 1-2-1980 one S. Anandaram was the Chairman of the Shipyard, and that he brought to the notice of Sri Anandaram " the affairs of the plaintiff now and then". He also stated as follows:

"It is not true to say that the plaintiff was dismissed from service only to appoint Lakshmi Subramanyam wife of Subramanyam, Chief Manager, Engineer who was working as Lecturer in St. Joseph's College by then and to bring her as the Principal of Junior College. Anandaram addressed two D.O. Letters to the Director of Higher Education. At my request Anandaram wrote two D.O. letters to the Director of Higher Education. There was no resolution to request Anandaram for addressing letters to the Director, Higher Education. It is not true to say that only to bring Lakshmi Subramanyam as Principal of College, Anandaram wrote two D.O. letters to the Director of Higher Education.... The Regional Inspector of Rajahmundry had a lunch with and met the Chairman and DGM of D1 (Shipyard) and they had meals in Shipyard cafeteria. It is not true to say that the Chairman and DGM of D1 got prepared a report by the Regional Inspector of Rajahmundry against the plaintiff."

He further states:

"One A. Subbarao, an officer of Shipyard was appointed as officer to conduct enquiry against the plaintiff. There is no resolution passed by the Managing Committee appointing A. Subbarao as Enquiry Officer. In that enquiry I was the presenting officer. The Chairman and Managing Director of Shipyard appointed A. Subbarao as enquiry officer".

The plaintiff in Ex.B1 states, "in view of the above, and also in view of the deliberate and planned efforts to undermine my stature gained by unsparing service" before stating that he "hereby quit the post of Principal". Under the circumstances, it cannot be stated that there was no basis for the plaintiff getting himself worked up by the excerpts of the report of the Regional Inspector sent to him for his comments. DW1 admits in his cross-examination that the report of the Regional Inspector was not given to the plaintiff in its entirety and that himself and the President selected the matter out of the report that was sent to the plaintiff. In P.K. Ramachandra Iyer and Others Vs. Union of India (UOI) and Others, , the Supreme Court considered the import of a letter sent by one Dr. Y.P. Gupta who was working as a member of post-graduate faculty of Indian Council

of Agricultural Research (ICAR), which was treated by the Academic Council of ICAR as a letter of resignation by him from the membership of the faculty. The Supreme Court held as follows:

"The second grievance of Dr. Gupta is that he was illegally removed from the membership of the Post-graduate Faculty by the Academic Council. Few relevant facts in this connection are that Dr. Gupta felt that he was unjustly treated by his superiors by not allocating students for Ph. D. to him and by not facilitating post-graduate teaching. There is a long drawn-out correspondence in this behalf which we consider unnecessary to refer to save and except the letter dated May 30, 1970 which has been treated by the Academic Council as a letter of resignation of Dr. Gupta from the membership of the Faculty. By this letter petitioner Dr. Gupta informed the Academic Council that even though he has been repeatedly assured that his grievance would be thoroughly examined and full justice would be done to him for the discrimination and victimisation to which he has been subjected in the matter of allotment of students of 1968 and 1969 batches, nothing has been done in this behalf. He further states that he has been all along patiently waiting for the redressal of his grievance, yet justice has not been done to him. He then states as under:

As such, after showing so much patience in the matter, I am sorry to decide that I should resign from the membership of the Faculty in protest against such a treatment and against the discrimination and victimisation shown to me by the Head of the Division in the allotment of students of 1968 and 1969 batches and departmental candidates. This letter was placed before the meeting of the Academic Council convened on May 3, 1971 chaired by respondent 4. Letter dated May 30, 1970 of the petitioner was placed on the agenda at Item No. 17. In this connection, the Academic Council resolved as under :

Your letter was considered by the Council at its meeting held on May 3, 1971 when the Council came to the unanimous conclusion that you were not interested in continuing as Faculty Member and hence the Council regrets to utilize your services as a Faculty Member of the P.G. School any more.

The callous and heartless attitude of the Academic Council is shocking. It adds insult to injury. Dr. Gupta has been the victim of unfair treatment because he raised a voice of dissent against certain claims made by the high-up in ICAR in the field of Research. Avoiding going into the details of it, this resulted in Dr. Gupta being denied the allocation of students. He did not act in a precipitate manner. He went on writing letter after letter even including to respondent 4 beseeching him to look into the matter and to render justice to him. When everything fell on deaf ears, out of exasperation he wrote letter dated May 30, 1970 in which he stated that the only honourable course left open to him was to resign rather than suffer. The Council seized upon this opportunity to get rid of Dr. Gupta.....It clearly transpires that Dr. Gupta was hounded out of the Faculty membership and now the respondents try to hide this inconvenient fact by treating the cry of agony in the letter dated May 30, 1970 as letter of

resignation."

The Supreme Court noted that the learned Counsel for the ICAR stated that the Council would consider the question of taking back Dr. Y.P. Gupta and in view of that the Supreme Court disposed of the matter directing the Council to carry out its statement within three months. In the present case also, the plaintiff offered to quit the post of Principal pending enquiry by the Director of Higher Education out of frustration by the manner in which the inspection was conducted by the Regional Inspector and because of the part played by the higher-ups in seeing that the report was against him, as he believed. In the present case, I have already found that plaintiff's statement at the end of his comments in Ex, B1 did not amount to his resignation from the post of Principal. Therefore, it is not necessary to pursue this aspect of the matter further.

26. In view of my finding that the plaintiff did not voluntarily resign from the post of Principal and that he was prevented from joining duty as Principal and kept out of his substantive post high-handedly and was forced to hand over the charge on 28-5-1980, the question arises whether the management of the Junior College could treat him as continuing in service in the post of B.Ed. Assistant. I am clearly of the view that the management could not do so. The Andhra Pradesh Recognised Private Educational Institutions (Control) Act, 1975 ("1975 Act" for short) was in force at that time. Section 3 of the 1975 Act dealt with the dismissal, removal or reduction in rank or suspension of teachers employed in private educational institutions. Sub-sections (1) and (2) of Section 3 of the 1975 Ad provided as follows:

3 (1) Subject to any rule that may be made in this behalf, no teacher employed in any private educational institution shall be dismissed, removed or reduced in rank nor shall his appointment be otherwise terminated, except with the prior approval of the competent authority: Provided that if any educational management, agency or institution contravenes the provisions of this sub-section, the teachers affected shall be deemed to be in service.

(2) Where the proposal to dismiss, remove or reduce in rank or otherwise terminate the appointment of any teacher employed in any private educational institution is communicated to the competent authority that authority shall, if it is satisfied that there are adequate and reasonable grounds for such proposal, approve such dismissal, removal, reduction in rank or termination of appointment."

These provisions provided that unless there was prior approval of the competent authority no teacher employed in any private educational institution could be dismissed, removed or reduced in rank and, if the provisions were contravened, the teacher affected would be deemed to be in service in the case of reduction in rank, in the original rank held by the teacher prior to the reduction. In view of this, in the present case, the management of the Junior College could not have reduced the rank of the plaintiff i.e., from Principal to B.Ed. Assistant without the

prior approval of the competent authority; and even if he was purported to have been so reduced, he would be deemed to continue as Principal. It is not in dispute that no prior approval of the competent authority was obtained by the management of the Junior College for forcing the plaintiff out of the post of Principal and treating him as reduced in rank to B.Ed. Assistant. The contention of the management that the plaintiff voluntarily submitted to that does not stand scrutiny and is negated - as is held by me.

27. The next question is whether the plaintiff was dismissed from service on 21-7-1983 on the finding of the enquiry officer A. Subba Rao in a departmental enquiry against him. As already stated earlier, the plea taken in the written statement is that the plaintiff was charge-sheeted and that a departmental enquiry was conducted and that he was found guilty of all charges and that he was dismissed from service on 21-7-1983. It is also stated in the written statement that four criminal cases were pending against the plaintiff in the Magistrate's Court and that the records were also seized by the police and that the Society reserved the right to file any additional written statement that may become necessary. However, no additional written statement was filed.

28. The burden is on the defendants to establish that the plaintiff was validly dismissed from service on 21-7-1983. In his examination-in-chief the plaintiff as F.W.I stated that the management of the Junior College got a domestic enquiry conducted, where in he was charge-sheeted and Sri D.S.V. Subba Rao, the then Correspondent, was the complainant. He stated that the whole enquiry was conducted in 17 sittings during the period in between "14-7-1980 and 6-6-1981. He also stated that the enquiry officer's report was never communicated to him and that the intention of the punishing authorities to punish him, or show cause notice as regards punishment sought to be imposed, was not communicated to him. He further adds as follows:

"But from the communication I received from Office of D.H.E. (Director of Higher Education) it was learnt that the management of the college took a resolution in the chambers of Sri T.S. Krishnamurthy, the then Deputy General Manager, to the effect that I was to be dismissed from service retrospectively from 13-8-1980. This resolution was learnt to have been submitted to the office of D.H.E. for according approval for their action as required under statutory rules. Thereupon, the D.H.E. in his proceedings dated 25-5-1982 communicated to me the letter of the management calling for my explanation-cum-defence besides asking me as to why the request of the management be not acceded to. I submitted my explanation in my letter dated 10-6-1982 enclosing there to the depositions of both prosecution and defence witnesses of the domestic enquiry besides exposing the various irregularities committed by the management high-handedly and so on and so forth. After receiving my explanation the office of the D.H.E, in his proceedings dt. 22-7-1982 asked the Correspondent of the College to offer his comments on my explanation given to the D.H.E., the copy of which was reported to have been enclosed and the copy of this letter was also marked to

me. The Correspondent of the college appeared to have not given any comments. With spite and vendetta the Correspondent of the College had chosen to give a police complaint alleging against me for the charges of criminal breach of trust and misappropriation of funds. The Government auditors audited the accounts; the management of the college, it was reliably learnt, got the accounts audited by Brahmayya & Co., Chartered Accountants and an internal audit by Hindusthan Shipyard also was got conducted. But most surprisingly, the management of the college had been remaining silent about the audit reports. Even they did not hint those audits before any investigating agency nor did the Government auditors find fault with any thing during the period of my service as Principal with any defects whatsoever."

There is no serious cross-examination on behalf of the defendants on this part of the evidence of P.W.I. In his cross-examination he stated that the society's management framed charges against him and gave notice that he misappropriated the funds of the Society and also of mismanagement of the administration of the college. He stated that the Society's management did not communicate the order of the enquiry in respect of the charges framed against him for misappropriation of funds and for mismanagement of the college, but got published in a newspaper after his retirement that he was dismissed from service. He also stated that the management reported to the police against him and that the Managing Director of the Shipyard referred the matter to the C.B.I and filed a case against him in the criminal Court, and that a criminal case was pending against him in the local Magistrate's Court, and that arguments were to be heard in it. He also stated that he did not file orders passed by the High Court quashing the charge-sheets filed in three criminal cases filed against him. In his cross-examination, he further stated that one A. Subba Rao was the enquiry officer for the charges levelled against him by the Society and that he was dismissed from service on 21-7-1983 as notified in the paper, and that it was not true to say that he was not retired from service but he was removed from service. P. W.2, who worked as Secretary and Correspondent of the Society from 18-3-1983, stated in his cross-examination that he did not know whether any departmental enquiry was held against the plaintiff in respect of misappropriation of funds and that he did not remember whether the plaintiff was dismissed from service as he misappropriated the college funds. He stated that on 30-6-1983 he issued orders reinstating the plaintiff as Principal and that the plaintiff took charge as Principal on 30-6-1983, and that the plaintiff retired from service on 14-7-1983, and that he issued orders permitting him to retire from service.

29. D.W. 1, who was the sole witness for the defendants, stated in his examination-in-chief that the management found some discrepancies in the accounts and the managing committee in its resolution dated 21-7-1980 (Ex. B-14) directed him to initiate appropriate action against the plaintiff. Pursuant to Ex.B-14 he issued a charge memo to the plaintiff and the plaintiff gave reply. The managing committee was not satisfied with the explanation of the plaintiff and so appointed one A. Subba Rao to enquire into the charges levelled against the

plaintiff. A. Subba Rao enquired into the matter and submitted his report (Ex. B-15) dated 17-2-1982 and found plaintiff guilty of the charges - misappropriation of Rs. 570/-, making fraudulent entries of expenditure by false certification of duplicate vouchers, and purchase of goods at higher rates. D.W. 1 further stated that Ex. B-15 was placed before the managing committee and that it passed resolution on 20-2-1982 (Ex. B-16) to dismiss the plaintiff from service. That resolution was submitted to the Joint Director of Higher Education for approving the action of the managing committee proposing to dismiss the plaintiff from service; that the plaintiff refused the communication sent by the managing committee informing him about his dismissal from service; and that therefore, the Society got published in EENADU dated 19-2-1984 (Ex. B-17) that the plaintiff was dismissed from service. D.W. 1 also stated that the Society gave a report to the police and that the police investigated and filed a case against him and that the criminal cases were pending against him. He denied that the plaintiff retired from service on 14-7-1983. In his cross-examination he admitted that there was no resolution passed by the managing committee of the Society appointing A. Subba Rao as enquiry officer and that it was the Chairman and Managing Director of the Shipyard who appointed A. Subba Rao as enquiry officer. He also admitted that he himself was the presenting officer in that enquiry. He also admitted that the findings of the enquiry officer were not served on the plaintiff, and that the defendants did not call for explanation of the plaintiff in pursuance of the findings of the enquiry officer, and that the proposed action to be taken against the plaintiff was not communicated to the plaintiff either before 14-7-1983 or before submitting the proposals to the Joint Director of Higher Education. What is more important, he also admitted that there was no approval either from the Joint Director or Director of Higher Education for dismissing the plaintiff from service. In his cross-examination, he also stated that he did not know whether the plaintiff was acquitted in all the criminal cases filed against him. Thus, D.W.I confirms what the plaintiff stated as regards the non-communication of the report of the enquiry officer and absence of any opportunity to him before the alleged punishment of dismissal was imposed on him under Ex. B-16, resolution of the managing committee of the Society; and the violation of natural justice invalidating the said dismissal order is thus confirmed.

30. Apart from the above mentioned infirmity, there are at least two other features which establish that the order of dismissal set up against the plaintiff by the defendants was concocted one and was fabricated subsequently. One aspect had already been admitted by D.W. 1 when he stated that the plaintiff was removed and dismissed from service with effect from 21-7-1983 but not from 13-8-1980 as resolved in Ex. B-16, and that no resolution was filed showing that the plaintiff was dismissed from service with effect from 21-7-1983. In Ex.B-15 notice dated 16-2-1984 published in English in EENADU dated 19-2-1984, it was stated that the plaintiff was dismissed from service of the college for proven misconduct after due process of enquiry and necessary disciplinary procedure

where in he was given full opportunity to defend himself. It was further stated as follows:

"The dismissal order dated 21-7-1983 was sent to his address and it was returned undelivered with the postal endorsement dated 1-8-1983 "addressee not available since last 7 days. Hence returned to sender." The dismissal order was again sent on 30-8-83 to his address - one copy by Registered Post A.D., one by Certificate of Posting and one by ordinary post. The one sent by Registered Post was again returned with the postal endorsement dated 1-9-1983 "Refused hence returned ". In view of the above, this public notice is issued."

In Ex. B-13 notice also, it was stated that the plaintiff " was dismissed from service of Hindustan Shipyard Junior College with effect from 21-7-1983, vide registered letter of the same date addressed to him." Thus, there is material only to establish that the plaintiff was sought to be communicated by letter dated 21-7-1983 that he was dismissed from the service of the Junior College of the Society; but there is no material on record to establish how the plaintiff came to be dismissed from service with effect from 21-7-1983. No copy of the order dismissing the plaintiff with effect from 21-7-1983 was produced and proved; no resolution of the Managing Committee to that effect was produced and proved. In the absence of any material whatsoever, I have to hold that the defendants have failed to establish that the plaintiff was dismissed from the service of the Junior College with effect from 21-7-1983.

31. Ex. B-16 resolution of the Managing Committee of the Society, said to be of 20-2-1982, is as follows :

"The Managing Committee of Gandhigram Educational Society having considered the report of the Enquiry Officer on the charges levelled against Sri V. Parvateesam, Ex-Principal of the Hindustan Shipyard Junior College and having found that the Enquiry Officer holds all the charges referred to in the charge-sheet as proved and having accepted the said report resolved to recommend to the Joint Director of Higher Education and Competent Authority that in view of the charges having been proved Sri V. Parvateesam should be dismissed from service from the date he remained unauthorisedly absent i.e., 13th August, 1980."

As this resolution reads, it only recommended to the Joint Director of Higher Education and competent authority that the plaintiff should be dismissed from service with effect from 13-8-1980. D.W. 1 admitted that under the provisions of 1975 Act permission of Joint Director of Higher Education was necessary for dismissal of any teaching staff and that though the resolution was communicated to him on 22-2-1982, he did not ratify the dismissal. Even otherwise, there are other serious infirmities which go to the root. The first is that the enquiry officer A. Subba Rao was not appointed by the society but by the Chairman and Managing Director of the Shipyard as admitted by D.W. 1 - he also admitted that there was no resolution passed by the managing committee appointing A. Subba

Rao as enquiry officer. The second is that the enquiry officer's report (Ex. B-15) dated 17-2-1982 was said to have been placed before the managing committee at its meeting on 20-2-1982 even though the matter was not in the agenda, as stated by D.W. 1 As the resolution reads, a copy of Ex. B-15 report was not served on the plaintiff and no opportunity was given to him as regards the proposed punishment. This also clearly confirms violation of principles of natural justice and fair play. All this is assuming that the matter was in fact considered and this Ex. B-16 resolution was in fact passed on 20-2-1982.

32. But I find that Ex. B-16 resolution is highly suspect: there are several circumstances which strongly probablise that no such resolution was in fact passed or made on 20-2-1982 and that it was subsequently made up and ante-dated. D.W. 1 stated that the minutes book filed into Court (containing Ex. B-16 resolution) was for the period commencing from 16-10-1982 till 4-5-1983 and that the minutes of 4-5-1983 were not recorded in it. He stated that the resolutions passed in the meetings were written on the same day in the minutes book. He admitted that he put the dates under his signature in respect of the other resolutions except under Ex.B-16 resolution. He also admitted that Ex.B-16 resolution was pasted in the minutes book on a different paper and that the members did not put any date under their signatures in the minutes book except in Ex. B-16. He also stated that Ex. B-16 resolution was written on the next page but not opposite to the agenda item whereas in the other meetings resolutions were noted opposite to the agenda item.

It is seen in the minutes book that the other resolutions passed at the meeting held on 20-2-1982 were all hand written in the opposite page to the page in which agendas were noted. He denied that there was difference in ink items 4 and 5 in the meeting held on 20-2-1982. But two aspects stated out. One is that D.W.I admitted that the dismissal of plaintiff from service was not included in the agenda in the meeting held on 20-2-1982. The second is that unlike the other resolutions passed on that day, Ex. B-16 resolution was typed on a separate sheet and the signatures of the members were taken on it and it was pasted. If the matter was considered and a resolution was passed on 20-2-1982 along with other resolutions on that day, no explanation is forthcoming as to why it was typed on a separate sheet and was pasted.

33. There is another circumstance which conclusively probablises and establishes that Ex.B-16 resolution was not made on 20-2-1982 but was fabricated subsequently and ante-dated. Plaintiff got issued notice dated 25-1-1982 (Ex. A-21) through his lawyer to the Secretary and Correspondent of the Junior College requesting him to issue proceedings for continuing plaintiff as Principal and stating that if no action was taken in that regard he would be forced to take the matter to a Court of law. Also the Secretary and Correspondent was called upon to pay a sum of Rs. 39,526/- towards arrears of salary of the plaintiff upto the end of 31-12-1981 together with interest. Ex. A-22 is the reply dated 9-2-1982 of the Secretary of the Society to the plaintiff's Advocate stating with

reference to the notice dated 25-1-1982 that it was referred to the legal advisor and that they would be replying shortly. Ex. A-23 is the reply dated 21-2-1982 of the 2nd defendant's Advocate. Though this letter was addressed on the day after Ex. B-16, no mention whatsoever was made of the resolution dated 20-2-1982 in it. Plaintiff got issued another notice dated 1-3-1982 (Ex. A-24) to the Society's advocate stating therein, inter alia, that he must be deemed to be continuing in service as Principal of the junior College and hence was entitled for an amount of Rs. 39,526/- as detailed in the earlier notice and that he was also entitled to monthly salary and other allowance etc. from time to time to future until he was restored back as Principal or until the age of his superannuation whichever was earlier, and that the matter should be settled at the earliest and that he was reserving the right to initiate legal proceedings for the recovery of the amounts due to him with costs and subsequent interest. The Society's advocate gave reply dated 13-4-1982 (Ex. A-26). In that reply also no mention was made of the decision taken by the managing committee on 20-2-1982 on the report of the enquiry officer to dismiss the plaintiff. On the other hand, it was only stated as follows:

"As already stated in para 18 of my reply dated 21-2-1982 your client by his unauthorised absence disentitled himself for any claim of salary even as a B.Ed. Assistant. Action is yet to be taken against him for his unauthorised absence as he had already been cautioned of suitable disciplinary action against him for his unauthorised absence as per our letter dated 25-8-1980.....Hence, your client is an unauthorised absentee and is not entitled to any amount by way of wages or otherwise. This being the position the question of entitlement for the monthly salary and other allowances by your client in future also do not arise unless and until he resumes duty as B.Ed. Assistant."

It is inconceivable that in a lawyer's reply on behalf of the management addressed to the advocate of the plaintiff the decision taken by the management of the Junior College to dismiss the plaintiff with effect from 13-8-1980 would not have been mentioned, if really such a decision was in fact taken by 13-4-1982 (the date of Ex.A-26) - on the other hand he was told that entitlement to monthly salary would not arise unless and until the plaintiff resumed duty as B.Ed. Assistant. D.W. 1 was cross-examined on this and he admitted that there was no mention in reply notice Ex. A-26 that a resolution was passed dismissing the plaintiff from service on 20-2-1982 and that the plaintiff was required to join as B.Ed. Assistant under Ex. A-26. No explanation was given by him as to why this happened. The only inference from this can be that there was no such resolution even by the date of Ex.A-26 i.e., 13-4-1982. Plaintiff was not cross-examined on his statement in his examination-in-chief that management of the college took a resolution in the chambers of T.S. Krishnamurthy to the effect that he was to be dismissed from service retrospectively from 13-8-1980 and that the said resolution was submitted to the office of the Director of Higher Education for according approval and that (hereupon the Director of Higher Education in his proceedings dated 25-5-1982 communicated to him the letter of the

management calling for his explanation cum defence etc. There was no cross-examination also on the plaintiff's statement that after his explanation dated 10-6-1982 was received, Director of Higher Education by proceedings dated 22-7-1982 asked the correspondent of the Junior College to offer his comments, but the correspondent did not give any comments. From this it is obvious that the said resolution was fabricated some time after 13-4-1982 (the date of Ex. A26) and before 25-5-1982 (the date of the proceedings of the Director of Higher Education calling for the explanation of the plaintiff) and that it was ante-dated. In the light of this discussion, I am clearly of the view that Ex.B-16 resolution was made later and ante-dated and that it was not in fact passed as a resolution on 20-2-1982. I am also of the view that it cannot have any validity because it purported to remove the plaintiff with effect from 13-8-1980 when the 1975 Act was in force and there was nothing on record to show that the requirements of Section 3 of the Act were fulfilled. In the result, the contention on behalf of the defendants that the plaintiff was dismissed from service with effect from 18-8-1980 or from 21-7-1983 has no legs to stand and has to be rejected.

34. It follows, therefore, that the plaintiff must be treated as in service till he reached the age of superannuation and retired from service. My finding on issue No. 4 is thus in favour of the plaintiff and against the defendants. In view of my finding that the plaintiff did not voluntarily quit the post of Principal and that he was forced to hand over charge, my finding on issue No. 3 is in favour of the plaintiff and against the defendants. In view of that finding, issues Nos. 5 and 6 relating to reinstatement and voluntarily quitting the post are no longer relevant because the plaintiff must be treated as continuing in service as Principal. In view of my findings on issues Nos. 3 and 4, issue No. 2 has to be answered in favour of the plaintiff to the extent of holding that he is entitled to claim arrears of salary.

35. The next question is regarding the amount that can be allowed to the plaintiff towards his salary. The plaintiff claimed arrears of salary from 1-5-1980 to 14-7-1983 and also the amount due to him for the period from 1-3-1979 to 31-4-1980 consequent to the revision of pay scales and allowances implemented in 1980 i.e., Rs. 76,146-67 Ps. and Rs. 2330-18 Ps. respectively. He also claimed interest at 12 per cent per annum for the period from 1-5-1980 to 14-7-1983 and also subsequent interest at 12 per cent per annum on the said sum. The Society questioned the validity and correctness of the statement of claim appended to the plaint. It is seen that in Ex. A-21 notice issued on behalf of the plaintiff a sum of Rs. 39, 526/- was claimed as due from the Society towards arrears of his salary upto the end of 31-12-1981. In the detailed reply dated 21-2-1982 (Ex. A-23) given on behalf of the 2nd defendant the amount of Rs. 39,526/- claimed by the plaintiff as due by way of arrears of salary was not questioned though the liability to pay was disputed. In Ex. A-24 notice on behalf of the plaintiff the demand for salary was reiterated and in the reply, Ex. A-26, given on behalf of the Society, the quantum claimed was not disputed but it was contended that the plaintiff disentitled himself from any claim of salary even as

B.Ed. assistant in view of his unauthorised absence. Very much earlier, in Ex.A-27 letter dated 7-7-1981 the plaintiff claimed that he must be deemed to be in service and entitled to full salary as Principal of the Junior College and requested the society to arrange for the payment of salary as Principal of the Junior College "from 1-5-1980 till that date duly deducting any part payment that may have been credited on 21-7-1980 to my account". He also stated therein as follows:

"With regard to my pay fixation and non-payment of arrears in the revised pay scales effecting from 1-4-1978, the responsibility squarely rests with you."

Plaintiff relies on Ex. X-2 letter dated 17-11-1983 addressed by P.W.2 to the Director of Higher Education Government of Andhra Pradesh for releasing the sum of Rs. 78,476-85 Ps. claimed by the plaintiff. The detailed statement attached to the said letter gives full month-wise particulars and how the said amount was arrived at. P.W.2 in his evidence stated that he sent the proposals to the Government for releasing arrears of salary of F.W. 1(Plaintiff) and in Ex. X-2 he gave the details of salary payable to the plaintiff with a covering letter addressed to the Director of Higher Education. P.W. 2 also stated in his examination-in-chief that Ex.X-3 was the proceedings of the Director of Higher Education dated 5-8-1983 continuing him as Secretary and Correspondent of the Junior College until further orders. In his cross- examination P.W. 2 admitted that he submitted his resignation as Secretary and Correspondent on 1-6-1983 and that his resignation was accepted by the society on 30-6-1983. But there was no cross-examination of P. W.2 whatsoever on Ex.X-2 and the details of the salary payable to the plaintiff stated therein. D.W. 1 stated in his examination-in-chief that P.W. 2 was appointed as Secretary and Correspondent after he (D.W.I) resigned as Secretary. He also stated that P.W. 2 appointed the plaintiff as Principal as per the directions of the Joint Director of Higher Education and that the plaintiff joined as Principal as per the orders issued by P. W.2. He also stated that the resignation of P.W. 2 was accepted on the forenoon of 30-6-1983. In his cross-examination D.W.I admitted that there was no resolution of the managing committee authorising him to look after the legal affairs of the Society even after he resigned from the Secretaryship. He admitted that the Shipyard authorised him to look after the legal affairs of the Society. He also admitted that he gave a declaration when P.W. 2 was appointed as Correspondent and Secretary of the Society and that he did not obtain any approval from the Director of Higher Education to look after the legal affairs of the plaintiff on behalf of the Society. He also stated that he was on long leave for a period of four months from 24-3-1983 and that after handing over charge to P.W.2 he did not know personally the actions taken by P.W.2 or his successor T.H. Prasad regarding the plaintiff. He also admitted in his cross-examination that the plaintiff was the permanent Headmaster of the High School. He did not say anything regarding Ex.X-2 and the amounts payable toward the salary of the plaintiff. P.W.2 admittedly was appointed as Secretary and Correspondent of the Society and there is no reason to disbelieve the statement of difference in salary payable to

the plaintiff for the period from 1-3-1979 to 31-4-1980 and the salary payable to him for the period from 1-5-1980 to 14-7-1983. The defendants have not adduced any evidence whatsoever to dispute the same.

36. The learned Counsel for the respondents/defendants submits that the plaintiff instituted the present suit on 7-6-1984 and that, therefore, he can claim only amounts due and payable to him from three years prior to that period, i.e., from 8-6-1981 and, therefore, he cannot claim the salary that became payable to him prior to that date as that was barred by time. The learned Counsel for the plaintiff relies on the decision of the Supreme Court in *Maimoona Khatun and Another Vs. State of Uttar Pradesh and Another*, . That was a case where the services of an employee of Uttar Pradesh Government were terminated and on his representation his officer (Superintending Engineer) directed his reinstatement treating the intervening period as leave admissible to him. In spite of the order of reinstatement dated 31-12-1955 he was not paid the salary from 15-2-1954 to 14-2-1956. He died on 12-1-1957. His widow and daughters gave notice u/s 80 C.P.C and filed a suit for the recovery of arrears of salary due from 15-2-1954 to 14-2-1956. The Government of Uttar Pradesh contended that the starting point for limitation was not the date of reinstatement but the date when his claim became due and any claim made beyond three years of the filing of the suit was barred by limitation. The Supreme Court referred to Article 102 of the Limitation Act, 1908 (Article 7 of Limitation Act, 1963) and to the judgment of the three Judges Bench of the Supreme Court in *The State of Madhya Pradesh Vs. The State of Maharashtra and Others*, and observing that decision fully endorsed the view taken by the Madras and Bombay High Courts in *State of Madras Vs. A.V. Anantharaman*, and *State of Bombay v. Dr. Sarjoo Prasad Gumasta*, ILR (1968) Bom 1024 held as follows:

"It seems to us that if we take the view that the right to sue for the arrears of salary accrues from the date when the salary would have been payable but for the order of dismissal and not from the date when the order of dismissal is set aside by the Civil Court, it will cause gross and substantial injustice to the employee concerned who having been found by a court of law to have been wrongly dismissed and who in the eye of law would have been deemed to be in service, would still be deprived for no fault of his, of the arrears of his salary beyond three years of the suit which, in spite of his best efforts he could not have claimed, until the order of dismissal was declared to be void. Such a course would in fact place the Government employees in a strange predicament and give an undeserving benefit to the employers who by wrongfully dismissing the employees would be left only with the responsibility of paying them for a period of three years prior to the suit and swallow the entire arrears beyond this period without any legal or moral justification. This aspect docs not appear to have been noticed by the courts which have taken the view that the starting point of limitation would be three years from the date of the suit and was for the first time noticed by this Court in *State of Madhya Pradesh v. State of Maharashtra* which seems to us to have righted a wrong which was long overdue.

For these reasons, therefore, we are clearly of the opinion that in cases where an employee is dismissed or removed from service and is reinstated either by the appointing authority or by virtue of the order of dismissal or removal being set aside by a Civil Court, the starting point of limitation, would be not the date of the order of dismissal or removal but the date when the right actually accrues, that is to say, the date of the reinstatement, by the appointing authority where no suit is filed or the date of the decree where a suit is filed and decreed."

On the facts of that case (Maimoona Khatun) the Supreme Court held ;

"..... once the Civil Court held that the direction given by Superintending Engineer to treat the period of suspension as on leave being non est, the position would be that the employee continued to remain in service and the effect of the adjudication was to declare that he was wrongfully prevented from attending his duties as a public servant. In other words, the right to emoluments accrued on the date when the suit was decreed and the starting point of limitation will be that date because at no time prior there was any accrual of the right and hence the starting point of limitation would not be the date of reinstatement but the date when the Court held that the direction given by the Superintending Engineer was bad because until such a declaration was made, it was not open to the employee to have claimed the arrears of his salary."

This principle was followed in AIR 1987 1644 (SC) , Maharaja Sayajirao University of Baroda and Others Vs. R.S. Thakar, and State of Punjab and Ors. v. Bazva Singh Harijan . R.S. Thakar's case was on a Writ Petition under Article 226 of the Constitution of India questioning the order of the University of Baroda that the employee (R.S. Thakar, petitioner in the Writ Petition), lecturer in the University, ceased to be in the employment of the University. A Division Bench of the High Court of Gujarat held that the termination of the lecturer's was null and void and directed his reinstatement into service and, after giving an opportunity to the University, held that it was liable to pay back wages to the lecturer from 20-9-1973 when his employment was ordered to have been ceased till 14-9-1981 on which date he was directed to be reinstated. The Supreme Court held that the High Court considered the question of back wages at length and agreed with the view taken by the High Court awarding back wages for nearly eight years. In Rajendra Prashad's case the Supreme Court declared that the order of suspension of the appellant ceased to be operative from 17-10-1975 and that he could not be denied his salary for the period from 20-2-1964 to 15-1-1966, even though the suit for recovery of arrears of salary was filed in 1968 as seen from the discussion at para 8 in Kayastha Pathshala, Allahabad and Another Vs. Rajendra Prasad and Another, .

37. I am of the view that the principle expounded in Maimoona Khatun's case (supra) is attracted to the facts of the present case. According to the plaintiff, he was reinstated as Principal on 30-6-1983 and he joined as Principal on the same day. As already stated, D.W. 1 admitted that P.W.2 was appointed as Secretary and Correspondent after he resigned as Secretary and that P.W.2 appointed the

plaintiff as Principal as per the directions of the Joint Director of Higher Education, and that the plaintiff joined as Principal pursuant to the orders issued by P.W.2 Therefore, time for plaintiff's claim for recovery of back wages started running from 30-6-1983 and as the suit was filed on 7-6-1984 it was within time. No doubt the Society contended that P.W. 2 had no authority to reinstate the plaintiff as Principal, but no material was placed to establish the same and the evidence of D.W. 1 referred to earlier did not establish that plea of the Society. Even otherwise, what reservations were imposed on P.W. 2 while appointing him as Secretary and Correspondent of the Junior College was a matter within their special knowledge and the plaintiff cannot be denied the benefit of the order of reinstatement admittedly issued by P.W. 2. The Society also claimed that the plaintiff voluntarily resigned from the post of Principal, but that is negated by me; similarly the plea of dismissal of the plaintiff set up by the Society is also unfounded. I, therefore, hold that the plaintiff's claim for recovery of arrears of salary for the period from 1-5-1980 to 14-7-1983, the date when he admittedly retired from service, is not barred by time. However, the plaintiff's claim for the difference in salary for the period from 1-3-1979 to 31-4-1980 became due when the revision of pay scales and allowances was admittedly implemented in 1980 itself. That claim could not have been effected by the events which overtook him on 30-4-1980 when he gave his comments in Ex.B-1 and resulted in Ex.B-6 resolution of the managing committee of the Society of the same date. This claim, therefore, was barred by 7-6-1984 when the suit was instituted.

38. The next question is whether the plaintiff is entitled to the entire salary for the period from 1-5-1980 to 14-7-1983. I am of the view that, on the facts of the present case, the plaintiff has to get the entire salary. The plaintiff was throughout willing to work as Principal and he agreed to vacate the post of Principal for the purpose of enabling an enquiry to be conducted by the authorities concerned which was not done. The authorities of the Education Department throughout insisted that the management of the Society should reinstate and continue the plaintiff as Principal of the Junior College and to allow him to work as such. Unfortunately, the management was adamant and did not allow the plaintiff to continue as Principal and without any basis insisted that he should work as B.Ed. Assistant and even passed a resolution (Ex. B-14 dated 21-7-1980) suspending him. The management stubbornly prevented the plaintiff from working as Principal even after he was reinstated on 3-6-1983 by P.W. 2 and on the other hand, purported to dismiss him from service by fabricating an ante-dated resolution -1 found that the dismissal of the plaintiff from service (whether from 13-8-1980 or 21-7-1983) purported to have been made by the management of the Society was not established. The manner in which the plaintiff was treated merits a decree in favour of the plaintiff for Rs. 76,146-67 Ps. towards arrears of salary from 1-5-1980 to 14-7-1983 together with interest thereon from the date of the institution of the suit i.e., 7-6-1984. I am of the view that interest at 9 per cent per annum would meet the ends of justice. This amount has to be paid by the Society. As held in *Kayastha Pathshala's* case

(supra), incase like this the Government cannot be saddled with the liability to make payment or reimburse the Society. In spite of several orders made by the authorities of the Education Department, the Society stubbornly refused to restore the plaintiff to the post of Principal. Therefore, the Society cannot escape from its liability.

39. The next question is whether there should be a decree as against the Shipyard as well. On the facts of the present case, the plaintiff is entitled also to a decree as against the Shipyard. As already pointed out, though the Society is registered as a society, it is under the total control of the Managing Director of the Shipyard. Ex.A-19 shows that the President, Secretary and Treasurer of the Society shall be nominated by the Managing Director of the Shipyard and that the Secretary shall have the general control over all the affairs of the Society including the routine administration of the Society and the institutions under its management. The evidence of D.W. 1 clearly establishes that the Shipyard nominates the persons to the posts of the President, Secretary-cum-Correspondent and Treasurer of the Society, that the Chairman and Managing Director of the Shipyard could appoint anybody as Correspondent and remove him at the pleasure of the Shipyard, that the Regional Inspector of Rajahmundry met and had lunch with the Chairman and Managing Director of the Shipyard in Shipyard cafeteria, that the Chairman addressed D.O. letters to the Director of Higher Education as regards the matters relating to the plaintiff, that the Shipyard authorised him to look after the legal affairs of the Society, and that the Chairman and Managing Director of the Shipyard appointed A. Subba Rao as enquiry officer in the disciplinary enquiry against the plaintiff. D.W. 1 also admitted that he was bringing to the notice of the Chairman and Managing Director of the Shipyard the affairs of the plaintiff now and then. D.W. 1 also stated in his cross-examination as follows:

"The general body meeting of 2nd defendant's Society was not held from 1978 till date. The 2nd defendant did not collect Re.1/- from the parents of the students from 1978 onwards. The 1st defendant provided the college premises at a nominal rent or Re.1 /- per month. The 1st defendant bears the capital expenditure of the Junior College. I do not know whether the 1st defendant paid any endowments providing the funds to the Junior College. The 1st defendant is at liberty to take the entire administration and management of the 2nd defendant Society..... The 2nd defendant's accounts are being audited by the 1st defendant's auditor in addition to the Government auditors."

Thus the evidence adduced on behalf of the defendants clearly establishes the total control that the Shipyard has over the affairs of the 2nd defendant, and how it interfered through its Chairman and Managing Director in the matters relating to the plaintiff himself which is the subject matter of the present case.

40. In the result, the appeal is allowed and the judgment and decree dated 5-2-1990 in O.S.No.225 of 1984 of the Principal Subordinate Judge at

Visakhapatnam are set aside and the suit is decreed to the extent of Rs. 76,146-67 Ps. towards arrears of salary of the plaintiff from 1-5-1980 to 14-7-1983 together with interest thereon at 9 per cent per annum from the date of the institution of the suit i.e., 7-6-1984. The plaintiff shall have proportionate costs throughout.