

(1991) 07 AP CK 0033

In the Andhra Pradesh High Court

Case No : Writ Appeal No. 454 of 1986 and Writ Petition No. 4172 of 1987

Vasavi College of Engineering

APPELLANT

Vs

A. Suryanarayana and Others

RESPONDENT

Date of Decision : 09-07-1991

Acts Referred:

Andhra Pradesh Education Act, 1982 — Section 79, 83
Constitution of India, 1950 — Article 226

Citation : (1991) 3 ALT 335

Hon'ble Judges : Sivaraman Nair, J;M.N. Rao, J

Bench : Division Bench

Advocate : N. Ramamohana Rao and G. Narayana Reddy, for the Appellant; G. Narayana Reddy, for Respondent No. 1, The Govt. Pleader for Education for Respondent Nos. 2 and 3 and M.V. Ramana Reddy in W.P., for the Respondent

Judgement

Sivaraman Nair, J.—Appellant was the respondent in W.P. 7133/85. He is also the respondent in W.P.4172/87. W.P.7133/85 was allowed by judgment dt. 7.3.86. Appellant assails that judgment. Writ Petition No. 4172/87 was filed by the 1st respondent in the Appeal complaining that in spite of the above judgment in his favour, his service was terminated by an order dt. 6.3.1987. These two proceedings are closely inter-related. Therefore, we dispose them of by this common judgment. We will refer to the parties in the order in which they appeared in W.P.7133/85.

2. The facts are the following:

The 3rd respondent - Management appointed the petitioner as an Assistant Professor in Civil Engineering in the Vasavi College of Engineering, by order dt. 28.12.83. That appointment was temporary. He was paid a salary of Rs. 1840/- which was very nearly the maximum in the scale of Rs. 1200-50-1300-60-1900. The order of appointment stated that he should appear before a Selection Committee for regular appointment. On 12.2.84 the 3rd respondent issued a notification inviting applications for appointment as Professor in the department

of civil Engineering. Petitioner applied on 21-2-84 and appeared before a duly constituted selection committee on 28-7-84. But he was found unfit for appointment as professor. There was a condition attached in the advertisement that if a candidate was found not suitable to the post of professor, he might be considered for appointment in the lower post. The Selection Committee did not consider him for regular appointment as Assistant Professor, but continued him in employment. By order dt. 10.5.1983, 3rd respondent informed the petitioner that he was relieved with immediate effect from his temporary appointment, evidently as a measure of retrenchment. Petitioner filed Writ Petition No.7133/85 and obtained an order of stay of his relief. The 3rd respondent filed a counter affidavit contending that the petitioner was only a temporary appointee, that he was not found fit for regular appointment as a Professor and therefore termination of his service was proper. 3rd respondent also submitted that termination of service of a person who was found unfit for appointment could not be retrenchment and that any such temporary appointee could not insist upon continuance in service.

3. Amareswari, J. allowed the Writ Petition by judgment dt. 7.3.1986 holding that the very order dt. 10.5.85 indicated that the order was an order of retrenchment. The learned judge found the fact that the petitioner was appointed temporarily as an Assistant Professor or that he was not found fit to be appointed as a Professor was no justification for terminating his service. The Court held further that the termination of his service could have been effected only with the prior approval of the competent authority or the next higher authority as the case may be, as provided u/s 83 of the Andhra Pradesh Education Act. The learned Judge also observed that there was substance in the contention of the petitioner that even on initial appointment, he was granted pay of Rs. 1840/-, almost equal to the maximum, indicated that he was being rewarded for his rich experience as a lecturer for over a period of sixteen years. Yet another observation of the learned judge was that in view of the fact that he was already holding the post of an Assistant Professor, though on a temporary basis, the respondent was duty bound to consider him at least for that post, if he was not found suitable for the post of Professor for which he had applied. It was therefore held that the termination of service of the petitioner was arbitrary.

4. Pursuant to the above judgment, the 3rd respondent re-instated the petitioner on 19.7.1986. In the meantime, it filed Writ Appeal No. 454/86 which was admitted on 29.4.1986 on 23.9.86, 3rd respondent issued a notification inviting applications for the post of Assistant Professor. Petitioner did not apply for appointment pursuant thereto before 15.10.86 which was the last date for such applications. The management by its letter dt. 6.10.1986 required the petitioner to submit his application. He did not apply, apparently on the basis that the judgment in W.P.7133/85 ensured his continuance in service. By letter dt. 9.12.86, the 3rd respondent required the petitioner to appear before the Selection Committee on 24.1.87, even without submitting an application. The Selection Committee did not select the petitioner - may be partly because, he did

not answer questions at the interview. By letter dt. 6.3.87, 3rd respondent terminated the service of the petitioner for the reason that he was not selected by the selection committee for regular appointment. Petitioner sent a registered notice dt. 9.3.87 seeking continuance in service. The Management sent a reply dt. 24.3.87 justifying the order of termination of service. Petitioner then filed W.P. 4172/87 challenging that order and seeking a direction to the 3rd respondent to pass formal order of regularisation of service with effect from the date of his appointment.

5. Mr. Ramana Reddy, counsel appearing for the 3rd respondent submitted that the judgment in W.P. 7133/85 indicated sufficiently well that termination of service by order dt. 10.5.85 was held to be arbitrary for the reason that the Selection Committee did not consider the petitioner for appointment as an Assistant Professor as it should have done. He submitted that a Selection Committee constituted in G.O.Ms.No.905 having considered the petitioner for regular appointment on 24.1.87 as an Assistant Professor and having found him unsuitable, termination of his service by order dt. 6.3.87 was proper and within the competence of the management. He also submitted that the Engineering College conducted by the 3rd respondent has not been receiving aid from the Government and therefore it was not obliged to comply with the provisions of the A.P. Education Act. He submitted further that Section 83 applied only to retrenchment and that non-employment of a person who was found unfit for regular appointment cannot be retrenchment, which alone requires prior approval u/s 83 of the A.P. Education Act.

6. There are some hurdles in the way of accepting these submissions. The first is that by judgment in W.P. 7133/85, this court held that the management was bound to obtain prior approval of the competent authority before it passed the order dt. 10.5.1985 terminating the service of the petitioner. 3rd respondent reinstated the petitioner pursuant to that judgment on 19.7.1986 and offered to grant all the benefits of emoluments for the entire period from 11.5.1985 to February, 1987, including arrears of D.A., arrears of increment etc., Petitioner seems to us to be justified in his submission that the 3rd respondent, having accepted and implemented the judgment in W.P. 7133/ 85, is not entitled to raise the contention that the provisions of the A.P. Education Act do not apply to teachers appointed by it. It may also be seen that the order of appointment, though temporary in nature, did not contain a condition that such temporary appointment was terminable, if the petitioner was not selected for regular appointment. In the absence of such a condition, and if no regular appointment was made to the post which the petitioner was holding, his temporary appointment would continue until validly terminated. That was apparently what the management also thought as is evident from the fact that his service was terminated only on 10.5.85, even though he was found to be unfit to be appointed as Professor at the interview held on 28.7.1984. Obviously, there was nothing in the order of temporary appointment dt. 28.12.1983 which stood in the way of continuance of the petitioner in such temporary appointment even after

he was found to be unfit for appointment by the Selection Committee.

7. Another factor which militates against the acceptance of the respondent's submission is that the management itself granted nearly maximum in the pay scale to the petitioner on his initial temporary appointment and sanctioned him even arrears of increments in the pay scale as a consequence of the order dated 6-3-1987. terminating his service.

8. Far more formidable legal objection is the conduct of the respondent in accepting the judgment in W.P. 7133/85 in which this court positively held that termination of service of the petitioner by order dated 10-5-1985 was invalid since it was not effected after obtaining prior approval of the competent authority. It is, of course true, that there was no acquiescence since Writ Appeal No. 454/86 was pending. But there is no denial of the fact that the management re-instated the petitioner pursuant to that judgment and sought to effect termination of his service allegedly in compliance with the observations contained in that judgment by the later order dated 6-3-1987. As a matter of fact, the entire argument of counsel for the management proceeded on the basis that the order dated 6-3-1987 was in strict compliance with the judgment in W.P. 7133/85.

9. We have to consider the submission of counsel for the 3rd respondent-management that termination of service of a temporary employee found to be unfit for regular appointment does not require prior approval under the provisions of Section 83 of the A.P. Education Act. It is necessary in this context to refer to the above provision which reads:

"83. Retrenchment of employees: Where retrenchment of any employee is rendered necessary by the management or competent authority consequent on any change relating to education or course of instruction or to any other matter, such retrenchment may be effected with the prior approval of the competent authority or the next higher authority, as the case may be."

10. Four submissions which counsel made before us are: 1) that the Engineering College not being an aided institution, the provisions of the A.P. Education Act cannot apply to teachers appointed by it:

2) that in any case Section 83 of the Act cannot apply to a temporary employee whose services were terminated due to non-selection for regular appointment:

3) such termination is not retrenchment which alone is covered by Section 83, and

4) even if all terminations of service may be brought within the fold of Section 83, such terminations must have been effected "consequent on any change relating to education or of course of instruction or to any other matter" relating thereto.

11. The learned Government Pleader submits that the Writ Petition should not

have been entertained nor any relief granted, since the respondent-management was a private institution which was not an authority under Article 12 of the Constitution of India.

12. For the sake of convenience we will take up the last submission first. It was decided by this court that it is competent for this court to entertain Writ Petition and grant relief under Article 226 of the constitution of India against management of private educational institutions, which are recognised and governed by the A.P. Education Act. We are of the opinion that the obligation cast on the private educational institutions under the Act and the Rules are enforceable, and that a teacher who complains of arbitrary termination of service in violation of the protective provisions of the Act and the Rules, is entitled to seek appropriate remedy in this court.

"13. We have to note that the A.P. Education Act (hereinafter referred to as the Act) was enacted as its very preamble indicates a -" an Act to consolidate and aimed the laws relating to the educational system in the State of Andhra Pradesh for reforming, organising and developing the said educational system and to provide for matters connected therewith or incidental thereto.

14. Section 2 (35) defines "private institution" to mean an institution imparting education or training., established and administered or maintained by any body of persons and recognised as educational institution by the Government, and includes a college, a special institution and minority educational institution.... The exclusions do not matter for the purposes of the present case. Sub-section (27) defines "management" as the "managing committee or the governing body, by whatever name called, of a private institution to which the affairs of the said institution are entrusted, but does not include a manager." "Manager" in relation to private educational or special institution is defined in Clause (iii) of Sub-section (28) as " the person nominated to manage the affairs of the institution under Sub-section (2) of Section 24." Establishment of educational institutions, their recognition, administration and control are governed by the provisions of Chapter-IV of the Act. Section 19 (c) deals with private institutions i.e., educational institutions established or maintained and administered by any body of persons registered in the manner prescribed. Section 20 provides for permission for establishment of educational institutions. Section 21 deals with grant or withdrawal of recognition of institutions imparting education. Section 24 deals with appointment and removal of manager of private institution. Section 25 deals with his duties and casts an obligation on him to be responsible for the management and conduct of "the affairs of the private institution" in accordance with the provisions of this Act and Rules or orders made thereunder. Section 26 deals with closure of private institutions in specified contingencies. Section 27 obligates the manager to hand over properties, records, etc. to competent authority on closure etc. of private institutions. Section 28 imposes restriction on alienation of property of private institutions and Section 31 deals with inspection of educational institutions. All these provisions apply to private institutions as

well. In other words, the scheme of the Act is such that it provides for regulation of the conduct of private institutions as also creates obligations on them. Though private in name, the institutions have rights and duties conferred by the statutes; and their functioning is regulated by the statutory provisions. Even a non-aided institution is governed by such regulatory provisions. We are of the opinion that institutions of this nature are liable to be compelled to discharge their statutory obligations just as much as they are entitled to seek the assistance of court for enforcement of the rights conferred under the statute. We do not propose to refer to other provisions relating to statutory obligations of the management of private institutions in view of the catena of decided cases to which we will advert presently.

15. An examination of the provisions of the Act and the Rules makes it clear that only on recognition duly granted is a private institution entitled to present students for examinations conducted by the Government or the University as the case may be. Grant of recognition is hedged in by conditions regulating the conduct of the affairs of the institution. Section 20(3) (c) (i) and (ii) obligates the educational agency to "appoint teaching staff qualified according to the Rules made by the Government" and to "satisfy the other requirements laid down by this Act and the rules and orders made thereunder." Section 21 (2) (a) visits the manager of a private educational institution with withdrawal of recognition for failure to fulfil "any of the conditions of recognition, or to comply with the orders of the competent authority in regard to accommodation, equipment, syllabi, text books, appointment, punishment and dismissal of teachers". These are statutory regulations which are enforceable. The private educational institutions are burdened with statutory obligations of a public character, notwithstanding the appellation of "private" in their nomenclature.

16. Chapter XIV of the Act deals with "payment of salaries and allowances to and disciplinary action against employees of private institutions". Chapter XV deals with their welfare and code of conduct and rules of conduct of the employees of educational institutions". Dismissal, removal or reduction in rank or suspension etc. of employees of private institutions are governed by Section 79 of the Act. Section 80 provides for appeals against orders of punishment imposed on employees of private institutions u/s 79. A further appeal is provided to Government u/s 81 subject to special provision regarding appeal in certain past disciplinary cases as provided u/s 82. Power is granted to prescribe manner of payment of pay and allowances of employees of private institutions in Section 84 of the Act. In so far as the Act contains provisions relating to service conditions of teachers and other employees of the educational institutions, we have to give meaning to such provisions as intended to ameliorate the conditions of service of such employees. We have therefore, to understand such provisions in the same manner as the ameliorative/welfare statutes are interpreted. On a scrutiny of these provisions we are of the opinion that the teachers and other employees are entitled to seek enforcement of their statutory rights against the management by approach of this court under Article 226 of the Constitution of India.

17. We have therefore no hesitation to hold that the private institutions who have statutory duties to perform and whose orders are subject to scrutiny by public authorities by reason of statutory provisions are subject to jurisdiction that this court is competent to entertain a complaint of violation of statutory obligations on the part of the managements of private institutions, and that it is competent for the High Court to enforce such obligations by mandamus or quash the offending orders by Certiorari.

18. The Supreme Court had occasion to consider the question of enforceability of the rights of teachers against private managements, on more occasions than one. Of the recent decisions in this regard - All Saints High School, Hyderabad and Others Vs. Government of Andhra Pradesh and Others, ; Frank Anthony Public School Employees" Association Vs. Union of India (UOI) and Others, , Mrs. Y. Theclamma v. Union of India, AIR 1987 SC 1210 are significant. In all the three cases, the managements belonged to minority communities. In the first two cases - religious minorities and in the third a linguistic minority. In Frank Anthony Public School Employees" case (2 supra) the educational institution was an unaided minorities school which was defined in the Delhi School Education Act as a recognised minority school which does not receive any aid. In All Saints Schools" case (1 supra) also the institution was a recognised but an unaided school. In Mrs. Theclamma"s case (3 supra), the school was an aided linguistic minority school. In all the three cases, the Supreme Court held that the teachers are entitled to seek enforcement of statutory provisions protecting their rights. In All Saints High School Employees Association case, (1 supra) the court held that-

"conditions of service which prescribe minimum qualifications for the staff, their pay scales, their entitlement to other benefits of service and the laying down of safeguards which must be observed before they are removed or dismissed from service or their services are terminated are all permissible measures of a regulatory character".

The Supreme Court upheld Section 6 of the A.P. Recognised Private Educational Institutions (Control) Act (Act 11 of 1975) which required the management to obtain prior approval of the competent authority if retrenchment of a teacher is rendered necessary by any order of the Government relating to education or courts of instruction or any other matter. In Frank Anthony Public School Employees case (2 supra) the Court reiterated the above with reference to earlier decisions. The court held:

"The management of a minority Educational Institution cannot be permitted under the guise of the fundamental right guaranteed by Article 30(1) of the Constitution, to oppress or exploit its employees any more than any other private employee. Oppression or exploitation of the teaching staff of an educational institution is bound to lead, inevitably, to discontent and deterioration of the standard of instruction imparted in the institution affecting adversely the object of making the institution an effective vehicle of education for the minority community or other persons who resort to it".

It is on that basis that the court held that Section 12 of the Delhi School Education Act which made the provisions of Chapter IV inapplicable to unaided minority institutions as discriminatory and void except to the extent that it made Section 8 (2) in applicable to unaided minority institutions. The court therefore granted a declaration to that effect and directed the Union of India and the Delhi Administration and its officers to enforce the provisions of Chapter IV except Section 8 (2) in the manner provided in the chapter in the case of the Frank Anthony Public School (2 supra). The management of the school was directed not to give effect to the orders of suspension passed against the members of the staff.

19. Mrs. Theclamma (in case No.3) a teacher in one of the schools conducted by the Andhra Education Society - a linguistic minority in Delhi - Challenged the disciplinary proceedings which were taken against her and the suspension which was ordered in aid thereof. The court held after a reference extensively to earlier decisions that-

" these decisions unequivocally lay down that while the right of the minorities, religious or linguistic to establish and administer educational institutions of their choice cannot be interfered with, restrictions by way of regulations for the purpose of ensuring educational standards and maintaining excellence thereof can validly be prescribed".

The court also held that" the provision contained in Sub-section (4) of Section 8 of the Act is designed to afford some measure of protection to the teachers of such institutions without interfering with the management's right to take disciplinary action.

20. These decisions have positively laid down that the teachers are entitled to seek enforcement of their rights by resort to writ jurisdiction. We should particularly notice that in All Saints High School case (1 supra) and Frank Anthony Public School Employees" case (2 supra) the institutions were unaided - but recognised private educational institutions.

21. We see considerable force in the submission urged by counsel for the petitioner-teacher that the only part of the conditions of service of the employees which is not covered is non-penal termination of service and that it is taken care of by Section 83 of the Act. He submits that "retrenchment" in the sense in which it is sought to be understood is only one mode of non-penal termination of service; and if that alone is within the comprehension of Section 83, it may rather be a charter to the management to act in any arbitrary manner, than a protection for teachers and other employees of private educational institutions.

22. We see considerable force in the submission that penal termination of service (dismissal or removal) and reduction in rank as also suspension are covered by Section 79 of the Act which requires that no teacher or member of the non-teaching staff employed in any private institution, shall be dismissed, removed or reduced in rank except after an inquiry in which he has been informed of the

charges against him and given a reasonable opportunity of being heard in respect of those charges.

23. Like-wise, Sub-section (3) imposes a similar obligation in respect of suspensions with an added obligation to obtain orders from the competent authority to extend the period of suspension beyond two months. The wording of Section 83 seems to us to indicate that it is in the nature of a residuary provision which comprehends termination of service of any employee consequent on any change relating to education or course of instruction or any other matter. In cases of such residuary instances of termination of service otherwise than as disciplinary measure, the employer is required to obtain prior approval of the competent authority or the next higher authority as the case may be. If the provisions of Chapter XIV of the Education Act are meant to provide relief to the teachers in the matter of retention in service, it cannot be as if a grey area between penal termination of service and reduction in rank on the one hand and retrenchment pure and simple relatable only to other incidental contingencies on the other would have been left out. It is far more reasonable to hold that termination of service of employees of private educational institutions are exhausted by the provisions contained in Section 79 and 83 of the Act rather than to hold that the management may terminate the service of the teachers except by dismissal or removal or retrenchment and that such termination of service will not be within the comprehension of the regulatory provisions of the Act. We hold that if the service of a teacher or other employee of a private educational institution is sought to be terminated by dismissal or removal, it shall be preceded by any inquiry as provided in Section 79 and such removal shall be effected only with the prior approval of the competent authority. Like-wise, in the case of any termination of service other than those covered by Section 79 of the Act, prior approval of such competent authority or the next higher authority is made a condition precedent for any other termination of service u/s 83 of the Act.

24. We are not persuaded to go into polemics relating to the meaning of the word "retrenchment", as understood by the Supreme Court in relation to Industrial Law. We need only notice that "retrenchment" has been separately defined in the Industrial Disputes Act and has acquired a connotation totally different from dismissal, removal and discharge for the purpose of Industrial Law. "Retrenchment" in such a context as defined u/s 2 (oo) of the Industrial Disputes Act as it stands at present, cannot be of any assistance in understanding the scope of "retrenchment" occurring in Section 83 of the A.P. Education Act. We therefore refrain from referring to the number of decisions on this aspect which counsel on either side have referred to us.

25. In the view which we take that Sections 79 and 83 complement each other and exhaust the entire area of termination of service, punitive or otherwise, it is not necessary for us to consider further refinements sought to be discovered by counsel for the employer that only such retrenchment of employees consequent on "any change relating to education or course of instruction or to any other

matter "fall within Section 83 of the Act . We are not persuaded to accept the specious argument that any other matter" must be relatable to change relating to education or course of instruction and can not take in termination of service or any other reason. The natural meaning to be given to the phrase "any other matter" seems to us to be exclusive of change relating to education or course of instruction. We are also of the opinion that the two preceding phrases are exhaustive and nothing is left out to be covered by the phrase "to any other matter" in relation to those two exhaustive categories.

26. There was some debate as to whether the principle of "ejusdem generis" applies to the interpretation of Section 83 of the Act. We are of the opinion that the two categories mentioned in Section 83 being exhaustive, "any other matter" as mentioned in the Section cannot have relation to those very matters. It must rather be all matters other than those two specified categories, and that will take in an order in the nature of termination of service of a teacher who was appointed temporarily and who was found unfit for regular appointment.

27. We note that the statute makes no difference between a temporary employee and a regular employee. Section 79 of the Act dealing with dismissal, removal or reduction in rank undoubtedly applies to temporary employees as well, except in a case where a person was appointed for a specified term, on the expiry of which, or subject to specific condition, in compliance with which, his services are sought to be terminated. In the present case undeniably, the temporary service of the petitioner which was continued for almost one year after he was found to be unfit to be a professor on 28-7-1984 was sought to be terminated on a second occasion by order dated 6-3-1987 for the only reason that he was not found fit for regular appointment. We have read the order of appointment scrupulously and could not find a condition that the temporary appointment as Assistant Professor was terminable if he was not selected for regular appointment in that post. As a matter of fact, in spite of his non selection on 28-7-1984 on the earlier occasion, he was continued in service till 10-5-1985, that itself indicates that non-selection for regular appointment was not meant to result in an automatic termination of the temporary appointment of the petitioner.

28. In the view which we have taken that Sections 79 and 83 supplement each other, and between them exhaust all terminations of service-penal or otherwise-and that those provisions apply equally to regular as also temporary, non-regular employees, it is not necessary for us to consider the other aspects of this question. We hold this view in view of the fact that in either case where the termination penal or non-penal, it is obligatory to obtain prior approval of competent or higher authority, as a condition precedent for any such action which the employer may take against the teaching or non-teaching employees of institutions covered by the Act. That seems to be the proper understanding of the salutary provisions which are ameliorative in character. If we are to understand Sections 79 and 83 to apply only to some categories and not to cover the entire gamut of terminations of services of employees of educational

institutions, that will leave a grey area where the whims and fancies of the management will rule the roost. Such an interpretation frustrates the very purpose of the enactment.

29. We therefore, hold that the learned single judge was right in allowing Writ Petition No. 7133/85 and in setting aside the order dated 10-5-1985 retrenching the petitioner from service. We also hold that the letter dated 6-3-1987 whereby the temporary appointment of the petitioner as per orders dated 28-12-83 read with the order dated 19-7-1986 was sought to be terminated, violated Section 83 of the A.P. Education Act, in that, the prior approval of the competent authority for such termination of service was not obtained.

30. This should ordinarily have resulted in a direction for re-instatement of the petitioner with consequential service benefits, counsel for the management submitted that the petitioner was employed remuneratively elsewhere during the period from 6-3-1987 onwards and a direction to the management to pay his emoluments over again will give him unmerited advantage. He relied on the decision of the Supreme Court in Lt. Governor of Delhi and others Vs. Const. Dharampal and others, and urged that this question may be decided after a further inquiry. We find that a Co-ordinate Bench of the Supreme Court had taken a slightly different view in a later decision in the matter of payment of remuneration for the period during which an employee was illegally kept out of employment, counsel relied on the later decision of the Supreme Court in State bank of India Vs. The Workmen of State Bank of India and another, . We have to take the principles of both these pronouncements in moulding the relief. Parties have not filed any affidavit as to the period of employment or quantum of remuneration. We have therefore to devise appropriate equitable directions which the facts of the case call for. Petitioner has not controverted the assertion that he had some gainful engagement during the relevant period which he would not otherwise have had. On a consideration of all facts and circumstances emerging from the pleadings and submissions made before us, we feel that the appropriate direction which we shall issue in directing re-instatement of the petitioner with all service benefits from 6-3-1987 will be that he will receive 50% of the remuneration which he would have received for the period from 6-3-1987 but for the order terminating his service.

31. We therefore dismiss Writ Appeal No. 454/86 and allow Writ Petition No. 4172/87. The 1st respondent in W.P. 4172/87 shall pay costs to the petitioner inclusive Advocate's fee of Rs. 500/- in all in the appeal and the Writ Petition. Government pleader's fee Rs. 250/- in each.