

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

CCP(S) No. 242/2025 in
MA No. 32/2025
c/w
MA No. 32/2025
CM Nos. 4036/2025 &
4401/2025

***Reserved on:- 22.09.2025.
Pronounced on:-30.09.2025***

Neeru Rajput and ors.

.....Appellants

Through: Mr. K. S Johal, Sr. Advocate with
Mr Karman Singh Johal, Advocate

Vs

Punam Suri President DAV College Managing Committee Th.
President and ors.

..... Respondents

Through: Mr. U.K Jalali, Sr. Advocate with
Mr. Sumir Pandita, Advocate
Mr. Imran Ahmad Rather, Advocate

CORAM: HON'BLE MR.JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1. Through the medium of present appeal, the appellants (hereinafter referred to as "plaintiffs") have challenged order dated 30.06.2025 passed by learned 1st Additional District Judge, Jammu (hereinafter referred to as "trial Court") whereby, application of plaintiffs under Order 39 Rule 1 & 2 CPC in a suit filed by them against the contesting respondents (hereinafter referred to as "defendants") has been dismissed and ex-parte interim order dated 02.05.2024 has been vacated.

2. It appears that the plaintiffs have filed a suit against the defendants before the trial Court for the following reliefs:-

(a) Declaration declaring order of appointment of the plaintiffs issued vide communication no. PS/Nagbani/TA-015/Dy.No.27582 dated 29.12.2023 to the extent period of temporary appointment of the plaintiffs is restricted till the start of summer vacations 2024, being totally illegal, unlawful, contrary to the law laid down by Hon'ble Supreme Court of India as well as various Hon'ble High Courts holding replacement of contractual/adhoc employees with another contractual/adhoc employee is not legally permissible.

(b) Declaration declaring Advertisement notice no.CAP/January/2024/01 dated 30.01.2024 issued and published by the defendant no.1 on its website/web-portal to the extent various vacancies including those against which the plaintiffs are working have been put to advertisement, being totally illegal, non-est, null and void and inoperative.

(c) With consequential relief of mandatory injunction directing the defendants to regularize the service of the Plaintiffs as PRTs and allow them to continue serving on the posts against which they have been engaged/appointed in view they having rendered considerable span of service to the complete satisfaction of the defendants as well as students and grant them all consequential benefits including their salary, allowances and all other benefits.

(d) With further consequential relief of Permanent Prohibitory Injunction restraining the defendants from disengaging/discontinuing the plaintiffs from the employment in any manner.

(e) Any other relief, which this Hon'ble Court in the facts and circumstances of the case deems fit and proper.

3. The case projected by the plaintiffs before the trial Court in the plaint was that they are serving in the defendant school as PRTs with effect from years ranging from 2013 to 2019. It was pleaded that last approval to the temporary appointment of the plaintiffs was granted by defendant No. 1 vide communication dated 29.12.2023. However, a condition was attached to the said approval that period of temporary appointment of the plaintiffs would be restricted till the start of summer vacation of 2024. According to the plaintiffs, because defendant No. 1 has not issued any engagement/appointment order in favour of the plaintiffs so, they are not aware whether their appointment/engagement is contractual, permanent or on daily wage basis. It has been alleged that this modus operandi is being adopted by defendant No. 1 with a view to avoid liability of paying gratuity to the plaintiffs. It was pleaded that the plaintiffs have been performing their duties and assignments and that they are rendering their services to the complete satisfaction of the defendants. It has been submitted that the plaintiffs are being made to undergo proper selection process year after year which is undertaken by the DAV Management Committee.

4. It was contended by the plaintiffs that an order bearing No. 8792 dated 07.08.2010 came to be issued by the Management Committee of the defendant school which provides that a person appointed on contractual basis can be continued

for a maximum of three academic sessions whereafter, his services will be put on probation for two years extendable by another year and after the expiry of probation period, the employee will be regularized in case there is a vacancy. According to the plaintiffs, there are vacancies available in the defendant school and because the plaintiffs are continuing for more than 03 years in service, as such, they are entitled to regularization of their services.

5. It has been pleaded that the defendants have issued impugned advertisement notice No. CAP/January/2024/01 dated 30.01.2024, whereby online applications have been invited for various teaching/non-teaching posts for different DAV schools. In response to the said advertisement notice, the plaintiffs submitted their applications as they were forced to compete for the posts on which, they were already working. It has been submitted that even though the plaintiffs performed exceedingly well in the Computer Based Test but they have not received the result and at the same time, candidates who have been declared as successful in the test have received the necessary communications. On this ground, it is being submitted that the plaintiffs apprehend that their tenure would not be extended after the summer vacation 2024.

6. The plaintiffs have challenged the advertisement notice dated 30.01.2024 (supra) on the grounds that the same is aimed at dispensing with their services. It has been submitted that the plaintiffs after having rendered services with the defendant school for a considerable period of time were entitled to regularization of their services but instead of doing so, the defendants are attempting to select/appoint new incumbents, which action is illegal and arbitrary. It has also been contended that performance of the plaintiffs has been excellent and they have never given any cause of complaint to the management of the defendant school or to the students. Therefore, the action of the defendants to dispense with the services of the plaintiffs is nothing but an exploitation. It has been further contended that services of the plaintiffs cannot be termed as "temporary or contractual" because they have continued for more than 03 years. The plaintiffs have further contended that in law, an adhoc employee cannot be replaced with another adhoc employee, as such, it is not open to the defendant school to replace the plaintiffs with a temporary arrangement.

7. The defendants contested the suit by filing their written statement. In their written statement, the defendants have taken a stand that the plaintiffs are contractual employees and as a matter of practice and procedure, the tenure of such contractual employees starts from inception of post vacation academic

session and ends with the commencement of summer vacation. It has been submitted that the plaintiffs were being relieved before summer vacation each year and thus, they have not worked continuously with the defendant school. It has been contended that the plaintiffs have accepted and acquiesced in the practice of their appointment on contractual basis beginning with expiry of summer vacation upto commencement of summer vacation of next year and now, they are estopped from challenging this process of recruitment.

8. It has been further contended that the plaintiffs have participated in the Computer Based Test and after most of them failed to clear the said test, they cannot be allowed to challenge the process. It has been submitted that only 03 amongst the plaintiffs have passed the Computer Based Test. It has been further submitted that only those who clear the Computer Based Examination, can be considered for engagement on temporary/contractual or substantive basis and without clearing the said test, the plaintiffs cannot be considered for their re-engagement. It has been submitted that as per the Rules in vogue, no regular/contractual appointment except the temporary appointment for 89 days can be made unless and until a candidate has appeared and cleared the CBT, demo and interview followed by the approval of competent authority.

9. According to the defendants, after the expiry of contractual period, the employees are relieved and thereafter, they are subjected to test and if they are able to qualify the said test, such employees can be re-appointed in the next session by the defendants, but in the instant case, the plaintiffs after having participated in the test and some of them having not been able to qualify the test cannot expect that their services will be continued, as the same is not permissible under the rules. It is submitted that this process of subjecting the candidates to test even for contractual engagement has been started recently from the year, 2023-24 and the persons like the plaintiffs have no right to continue on the posts if they fail to clear the test.

10. The defendants have further contended that injunction in favour of the plaintiffs directing the defendants to continue their services cannot be granted as the same is impermissible in law. It has been contended that the defendant school is neither State nor an instrumentality of State as such, the statutory or constitutional safeguards available to employees of the State or its instrumentalities are not available to the employees of defendant school which is a private entity.

11. The learned trial Court at the time of presentation of plaint, passed an ex-parte ad-interim injunction dated 02.05.2024 whereby status quo as regards services of the

plaintiffs was directed to be maintained. After the pleadings of the case were complete, the learned trial Court proceeded to hear the application of the plaintiffs for grant of interim injunction under Order 39 Rule 1 & 2 CPC finally and vide impugned order dated 30.06.2025, the learned trial Court, while dismissing the said application, vacated the interim order dated 30.06.2025. The application of the plaintiffs has been dismissed primarily on the ground that the plaintiffs after having participated in the Computer Based Test cannot turn around and lay challenge to the said process. It has also been held by the learned trial Court that in view of the provisions contained in Section 14 of the Specific Relief Act, which debars specific performance of contract of personal service, no injunction can be granted in favour of the plaintiffs.

12. The plaintiffs/appellants have challenged the impugned order passed by the learned trial Court through the medium of present appeal on the grounds that the action of the defendant school is not legally sustainable because there are vacancies available in the defendant school and just to avoid liability under the Payment of Gratuity Act, the defendants intend to dispense with the services of the plaintiffs. It has been further contended the plaintiffs have, by virtue of length of service which they have put in while serving in the defendant school become entitled to regularization of their services. It has been submitted that instead

of doing so, the defendants ought not to have dispensed with their services. It has been further contended that at the time when the plaintiffs joined the services of the defendants, there was no requirement of passing any test and once, the plaintiffs have acquired the right to get regularized, their said right cannot be taken away by the defendants by asking them to undergo a fresh selection process. It has been further contended that services of the plaintiffs cannot be termed as “temporary or contractual” because they have put in more than 03 years of service. It has also been contended that the defendant school cannot replace the plaintiffs by making arrangement on temporary basis and the services of the plaintiffs cannot be dispensed with when there is requirement of teaching staff in the defendant school.

13. I have heard learned counsel for the parties and perused the impugned order, grounds of challenge and the record of trial Court.

14. The first ground that has been urged by learned Senior counsel appearing for the appellants for assailing the impugned order passed by the trial Court is that while dismissing the application of the plaintiffs, the learned trial Court has, in fact rendered findings on merits of the case of the plaintiffs by observing that no injunction can be granted in favour of the plaintiffs and because of this, the suit of the plaintiffs would be

rendered infructuous. It has been contended that once services of the plaintiffs are dispensed with, the issues raised by the plaintiffs with regard to their right of regularization of their services and the contentions raised by them with regard to the action of the defendants asking the plaintiffs to undergo Computer Based Test become redundant. To support his case, the learned Senior counsel has relied upon the judgment of this Court passed in the case of **Harjinder Singh Vs. Sat Paul and ors.; CFA No. 28/2016** decided on 23.07.2019. It has been contended that if at all, the trial Court was of opinion that maintainability of the suit was required to be determined before proceeding further in the matter, the proper course for it was to frame a preliminary issue in this regard.

15. In the above context, it is to be noted that the plaintiffs have, through the medium of suit filed before the trial Court not only sought permanent prohibitory injunction against the defendants restraining them from discontinuing their services but they have also sought declaratory decree challenging the condition attached to their temporary appointment as also the advertisement notice dated 30.01.2024 with a mandatory injunction to allow them to continue their service. It has to be borne in mind that as per settled position of law, while deciding an application under Order 39 Rule 1 & 2 CPC, a trial Court, in the first instance, has to determine as to whether there is a prima

facie case in favour of the plaintiffs. For the limited purpose of determination of this issue, the Court is required to analyze the strengths and weaknesses of case of the plaintiffs on the basis of the pleadings of the parties and documents available on record. A prima facie opinion has to be arrived at by the trial Court after scrutinizing the material on record whether there is a prima facie case in favour of the plaintiffs. While undertaking such exercise, if the trial Court comes to a tentative finding that a particular relief is not available to the plaintiff in law, recording of such opinion in its order would not amount to rendering the suit of the plaintiffs as infructuous. The observations that are made by a trial court while deciding an application under Order 39 Rules 1 & 2 CPC are always tentative and the same do not affect the merits of the case at the stage of final disposal of the suit after conclusion of trial. The contention of learned Senior counsel appearing for the appellants in this regard is, therefore misconceived.

16. That takes us to merits of the case. As already stated, a trial Court while considering an application under Order 39 Rule 1 & 2 CPC has to frame a tentative opinion about the strengths or weakness of the case of the parties on the basis of pleadings and the documents on record. In the present case, the plaintiffs, by virtue of the application under Order 39 Rule 1 & 2 CPC are seeking a temporary injunction restraining the defendants from

terminating or dispensing with their service with a direction to the defendants to maintain status quo with regard to continuation of employment of plaintiffs. The question that arises for determination is as to whether a temporary injunction of such a nature can be granted in the facts and circumstances of the present case.

17. In the above context, it is to be noted that the plaintiffs claim to be working as Teachers with the defendant school which is neither a statutory organization nor is it an instrumentality of the State. The defendant school is a private organization which is being run by a trust. The question arises as to whether an employee of a private school can seek an injunction against the termination of his services, in the face of the provisions contained in Section 14 of the Specific Relief Act, which places an embargo on grant of specific performance in case of certain types of contracts. It reads as under:-

“14. Contracts not specifically enforceable.—

The following contracts cannot be specifically enforced, namely:—

(a) where a party to the contract has obtained substituted performance of contract in accordance with the provisions of section 20;

(b) a contract, the performance of which involves the performance of a continuous duty which the court cannot supervise;

(c) a contract which is so dependent on the personal qualifications of the parties that the court cannot enforce specific performance of its material terms; and

(d) a contract which is in its nature determinable.”

18. A plain reading of Clause (c) quoted above, shows that a contract of personal service cannot be specifically enforced. Section 41(e) of the Specific Relief Act lays down that an injunction cannot be granted to prevent breach of a contract the performance of which would not be specifically enforced, meaning thereby that a contract which cannot be specifically enforced, no injunction can be granted to prevent its breach.

19. The contract of employment of the plaintiffs with the defendant school is a contract of personal service. There can be no two opinions about it as the same is dependent upon the personal qualifications of the parties. So, even if there is a wrongful termination of the plaintiffs' contract of employment by the defendants, from their service, an injunction for its breach, in view of the provisions contained in Section 41 (e) of the Specific Relief Act cannot be granted. In my aforesaid view, I am supported by the consistent position of law laid down by the Supreme Court in its various judgments. Reference to some of these judgments is being made hereinafter for the purpose clarifying the legal position on this issue.

20. In **Sirsi Municipality By Its President Vs. Cecelia Kom Francis Tellis; (1973) 1 Supreme Court Cases 409**, the Constitution Bench of the Supreme Court, while discussing the legal position on the issue has divided the cases of dismissal of a servant under three categories. Paragraph Nos. 15 to 19 of the said judgment are relevant to the context and the same are reproduced as under:-

“15. The cases of dismissal of a servant fall under three broad heads. The first head relates to relationship of master and servant governed purely by contract of employment. Any breach of contract in such a case is enforced by a suit for wrongful dismissal and damages. Just as a contract of employment is not capable of specific performance similarly breach of contract of employment is not capable of founding a declaratory judgment of subsistence of employment. A declaration of unlawful termination and restoration to service in such a case of contract of employment would be indirectly an instance of specific performance of contract for personal services. Such a declaration is not permissible under the Law of Specific Relief Act.

16. The second type of cases of master and servant arises under Industrial Law. Under that branch of law a servant who is wrongfully dismissed may be reinstated. This is a special provision under Industrial Law. This relief is a departure from the reliefs available under the Indian Contract Act and the Specific. Relief Act

which do not provide for reinstatement of a servant.

17. The third category of cases of master and servant arises in regard to the servant in the employment of the State or of other public or local authorities or-bodies created under statute.

18. Termination or dismissal of what is described as a pure contract of master and servant is not declared to be a nullity however wrongful or illegal it may be. The reason is that dismissal in breach of contract is remedied by damages. In the case of servant of the State or of local authorities or statutory bodies, courts have declared in appropriate cases the dismissal to be invalid if the dismissal is contrary to rules of natural justice or if the dismissal is in violation of the provisions of the statute. Apart from the intervention of statute there would not be a declaration of nullity in the case of termination or dismissal of a servant of the State or of other local authorities or statutory bodies.

19. The courts keep the State and the public authorities within the limits of their statutory powers. Where a State or a public authority dismisses an employee in violation of the mandatory procedural requirements Or on grounds which are not sanctioned or supported by statute the courts may exercise jurisdiction to declare the act-of dismissal to be a nullity. Such implication of public employment is thus distinguished from private employment in pure cases of master and servant.”

21. Again, the Supreme Court has, in **State Bank of India and ors. Vs. S.N Goyal; (2008) 8 Supreme Court Cases 92;**

while, answering the issue relating to enforcement of contract of personal service, observed as under:-

“17. Where the relationship of master and servant is purely contractual, it is well settled that a contract of personal service is not specifically enforceable, having regard to the bar contained in section 14 of the Specific Relief Act, 1963. Even if the termination of the contract of employment (by dismissal or otherwise) is found to be illegal or in breach, the remedy of the employee is only to seek damages and not specific performance. Courts will neither declare such termination to be a nullity nor declare that the contract of employment subsists nor grant the consequential relief of reinstatement. The three well recognized exceptions to this rule are:

(i) where a civil servant is removed from service in contravention of the provisions of Article 311 of the Constitution of India (or any law made under Article 309);

(ii) where a workman having the protection of Industrial Disputes Act, 1947 is wrongly terminated from service; and

(iii) where an employee of a statutory body is terminated from service in breach or violation of any mandatory provision of a statute or statutory rules.

There is thus a clear distinction between public employment governed by statutory rules and private employment governed purely by contract. The test for deciding the nature of relief damages or reinstatement with consequential reliefs is whether the employment is governed purely by

contract or by a statute or statutory rules. Even where the employer is a statutory body, where the relationship is purely governed by contract with no element of statutory governance, the contract of personal service will not be specifically enforceable. Conversely, where the employer is a non-statutory body, but the employment is governed by a statute or statutory rules, a declaration that the termination is null and void and that the employee should be reinstated can be granted by courts. (Vide : Dr. S. Dutt vs. University of Delhi AIR 1958 SC 1050; Executive Committee of UP State Warehousing Corporation Ltd. Vs. Chandra Kiran Tyagi 1970 (2) SCR 250; Sirsi Municipality vs. Cecelia Kom Francies Tellis 1973 (3) SCR 348; Executive Committee of Vaish Degree College vs. Lakshmi Narain 1976 (2) SCR 1006; Smt. J. Tiwari vs. Smt. Jawala Devi Vidya Mandir AIR 1981 SC 122; and Dipak Kumar Biswas vs. Director of Public Instruction AIR 1987 SC 1422).

18. In this case the appellant is a statutory body established under the State Bank of India Act, 1955 and the contract of employment was governed by the State Bank of India Officers Service Rules, which are statutory rules framed under section 43(1) of the said Act. The respondent approached the civil court alleging that his removal from service was in violation of the said statutory rules. When an employee of a statutory body whose service is terminated, pleads that such termination is in violation of statutory rules governing his employment, an action for declaration that the termination is invalid and that he is deemed to continue in

service is maintainable and will not be barred by section 14 of the Specific Relief Act.”

22. In Kailash Singh Vs. Managing Committee, Mayo College, Ajmer; (2018) 18 Supreme Court Cases 216, the Supreme Court after taking note of its earlier judicial precedents, has made the following observations.

“19. We may hasten to add that, of course, in the given situation no inquiry appears to have been done, but the response of the appellants to the show cause notice issued by the Board of Governors, itself shows as to what transpired and reveals the stand of the appellants. All this led to a complete lack of confidence in the employees, by the Board of Governors. The decision by the Board of Governors, which is really the Managing Committee as defined under Section 18 of the said Act, was a unanimous one as provided in sub-clause (iii) of the second proviso to Section 18 of the said Act, and even the required salary was paid, albeit in two instalments. However, the Management did commit a legal default in not obtaining the consent of the Director of Education in writing, which has caused this long drawn legal battle. At the cost of repetition, we may re-emphasise that the Mayo College is a recognised institution but is not financially aided in any manner by the Central or the State Government, and the first proviso to Section 18 of the said Act has already been read down, and in our opinion, rightly so, in view of the 11 Judges Bench decision in T.M.A. Pai Foundation & Ors. v. State of Karnataka & Ors.,³ dealing exclusively with educational institutions, and a portion thereof,

separately dealing with unaided educational institutions, as pointed out by learned senior counsel for the Management, Mr. K.N. Bhatt, under the heading of "Private Unaided Non-Minority Educational Institutions". We have no hesitation in concluding that there can be no question of reinstatement in such a case, but the only remedy is by determining the compensation to be paid to the appellants, in view of the Management not having complied with the legal requirement of obtaining the consent of the Director of Education in writing.

20. We seek to buttress our conclusion with the following judicial pronouncements. In a seminal judgment in *T.M.A. Pai Foundation & Ors. v. State of Karnataka & Ors.*,⁴ an essential distinction is sought to be made in the case of private unaided educational institutions, opining that its essence is in the autonomy that the institution must enjoy in its management and administration. Thus, while in a government-aided institution, the Government may have a greater say in the administration, while in the case of unaided institutions, maximum autonomy in day-to-day administration is to be with the private unaided institution. This was held to be equally applicable to the teaching faculty and the members of staff, for maintaining excellence in education. In para 63 of the said judgment, the Bench took note of the grievance that wherever cases of misconduct are committed by teachers and members of the staff, for which disciplinary action is taken, the rules framed by the Government are against the Management, which *inter alia* require prior permission from a governmental authority, before

initiation of disciplinary proceedings. The most relevant observation in para 64 is:

“In the case of a private institution, the relationship between the management and the employees is contractual in nature.”

We may, however, add that thereafter the importance of a domestic inquiry, in accordance with the principles of natural justice, has also been emphasised. But then, in the present case, the show cause notice and the response to it, themselves seem to lend credence to the allegation of inappropriate behaviour of the appellants. The subsequent endeavour of Jeffry Jobard, through a communication to back-out, cannot really aid him to a large extent.

21. We may also note that were the appellants to file a civil suit, the evidence would have been recorded, and the matter gone into a greater detail in a factual context. This is relevant from both aspects of seeking restoration of services and quantification of damages. The significant aspect is that there should not be specific performance of a master-servant contract of service, and damages should be the appropriate remedy.”

23. From the aforesaid analysis of legal position, it is clear that when there is termination of contract of service, a declaration that contract of service still subsists cannot be made because no specific performance of contract of service can be granted. The law is well settled that if a contract of service is terminated by an employer in a manner not warranted by law, the only remedy to the employee is to claim damages for breach of contract. It is only

in cases of where a civil servant is removed from service in contravention of the provisions of Article 311 of the Constitution of India or where a workman having the protection of Industrial Disputes Act, 1947 is wrongly terminated from service or where an employee of a statutory body is terminated from service in breach or violation of any mandatory provision of a statute or statutory rules, that relief of reinstatement can be granted. In all other cases, the contract of employment cannot be specifically enforced and the only remedy available against the wrongful breach of contract is to seek damages and not specific performance.

24. Reverting back to the facts of the present case, if an interim injunction is granted in favour of the plaintiffs compelling the defendants to continue their services, it would amount to granting specific performance of contract of service which is impermissible in law. If the plaintiffs succeed in showing that the impugned action of the defendants is bad in law after trial of the case, they can always amend the suit and seek damages from the defendants. Mere refusal of injunction in favour of the plaintiffs would not render their suit before the trial Court infructuous. However, one thing is clear that the plaintiffs do not have a prima-facie case in their favour that would entitle them to grant interim direction of the nature which is being sought by them as the same is impermissible in law.

25. Another contention that has been raised by the plaintiffs is that because they have continued in service of defendant school for more than 03 years and as per the regulations governing the service conditions of the employees of the DAV Public Schools, contractual appointment can be extended up to maximum period of 03 years, therefore, once the plaintiffs have admittedly served with the defendant school for more than 03 years, they are deemed to be permanent employees.

26. The aforesaid contention of the plaintiffs prima-facie appears to be misconceived for the reason that it is not in dispute that the plaintiffs were being engaged by the defendant school for one session whereafter, their services were being disengaged and at the beginning of the next session, they were being reappointed. This sort of mechanism adopted by the defendant school clearly shows that the plaintiffs were never in continuous service of defendant school and after expiry of each session, a fresh contract of engagement was commencing between the plaintiffs and the defendant school. It is for this reason only that the plaintiffs have challenged the stipulation of their latest engagement order which provides that their engagement shall be only till commencement of summer vacation, 2024. Even otherwise, the regulations of the defendant school do not anywhere provide that an employee who has been engaged as a

temporary or contractual basis would automatically become permanent after three years.

27. As per Clause 9.3.4 of the regulations applicable to employees of defendant school, no regular/contractual appointments can be made unless and until a candidate has appeared and cleared Phase-I and Phase-II of selection process which includes Computer Based Test. Therefore, subjecting the plaintiffs to Computer Based Test for their reappointment/reengagement during the next session was an absolute necessity as a result of which, they were asked to undergo the Computer Based Test which is included in Phase-I. The plaintiffs participated in the said process and after some of them failed to make the grade, they have challenged the same by way of the suit before the trial Court.

28. It is true that a candidate while participating in the selection process does not acquiesce in the illegality of the process, but it is also a settled law that once a candidate takes the risk of participating in the selection process, he cannot turn around and challenge it after having failed to make the grade. In the present case, so far as process of Computer Based Test is concerned, it is not the case of the plaintiffs that any illegality has been committed while holding the said test. The grievance of the plaintiffs is that it was not necessary for them to undergo the said

test and merely, because they have not made the grade, their services cannot be disengaged. The plaintiffs, therefore, had taken the risk of participating in the selection process and when they could not make the grade which had the consequence of their disengagement, they have turned around and challenged the selection process which is impermissible in law.

29. Lastly, it has been argued by the appellants that the policy of engaging contractual teaching staff at the beginning of each session and terminating services of these engagees at the end of the session every year is not permissible in law. Reliance in this regard has been placed on judgment of the Supreme Court in the cases of **Rattan Lal and ors. Vs. State of Haryana and ors; (1985) 4 SCC 43** and **Manish Gupta & Ors. v. President, Jan Bhagidari Samiti & Ors.; (2022) 15 SCC 540**.

30. In the above context, it is to be noted that in both the aforesaid judgments, the Supreme Court was seized of the matters relating to adhoc appointments in Government institutions and not in private institutions. The Supreme Court in these cases has held that replacing a contractual/adhoc employee with a similar arrangement amounts to arbitrariness which violates Articles 14 & 16 of the Constitution of India. In the present case, the plaintiffs claim that the defendant school by adopting the similar procedure has resorted to arbitrariness. The

argument is not available to the plaintiffs against a private body because rights guaranteed under Articles 14 & 16 can be enforced only against the State and its instrumentalities and not against a private body. Therefore, the ratio laid down by the Supreme Court in aforesaid judgments is not applicable to the present case.

31. For what has been discussed hereinabove, it is clear that plaintiffs have failed to carve out a prima facie case in their favour. Thus, there is no need to consider the other aspects of the matter like balance of convenience and effect of grant or refusal of injunction. Accordingly, this Court does not pool any illegality much less perversity in the impugned order passed by the learned trial Court. The same, therefore, does not call for interference from this Court in exercise of its appellate jurisdiction.

32. The appeal lacks merit and the same is dismissed, accordingly. Interim order dated 02.05.2024 shall stand vacated.

33. Anything observed in this order shall not be taken as expression on merits of the case. The same shall not influence the trial Court while deciding the suit finally.

CCP(S) No. 242/2025

34. This contempt petition arises out of interim order dated 02.05.2024 passed in the main appeal. Since the main appeal has

been decided by a separate judgment passed today, as such, the interim order has merged with the final judgment.

35. The contempt proceedings, therefore, do not survive. The same are, accordingly, closed. The contempt petition stands disposed of.

(SANJAY DHAR)
JUDGE

JAMMU
30.09.2025
Tarun/PS

Whether the judgment is speaking?	Yes
Whether the judgment is reportable?	Yes

