

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

Case No. :- CM(M) No. 199/2023

Date of pronouncement on: 09.10.2025

Uploaded on: 07.11.2025

1. Tyndale Biscoe & Mallinson Society
PO Box 403 Sheikh Bagh, Srinagar
Kashmir.

Through its Director

Parwez Samuel Koul, Age 75 years

Son of Sham Lal Koul,

R/o Tyndale Biscoe School,

Sheikh Bagh, Lal Chowk, Srinagar

2. Rahul Rex Koul,
Administrator,
Tyndale Biscoe & Mallinson Society
PO Box 403 Sheikh Bagh, Srinagar
Kashmir 190001

.... Petitioner(s)

Through:- Mr. Sunil Sethi, Sr. Advocate with
Mr. Parimoksh Seth, Adv.

V/s

Bilal Ahmad Sheikh
Son of Ghulam Mohammad Sheikh
R/o Chanda Pora, Hubba Kadal,
Srinagar

....Respondent(s)

Through:- None

CORAM: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

JUDGMENT

1. Petitioners, in the instant petition, have invoked the supervisory jurisdiction of this Court, enshrined under Article 227 of the Constitution of India, for quashing of order dated 16.02.2023 (for short, “the impugned

order”) passed by the Court of learned 3rd Additional Munsiff, Srinagar [for short, “the trial Court”].

2. The facts giving rise to filing of the instant petition would reveal that respondent herein as a plaintiff filed a Suit for declaration and injunction against the defendants-petitioners herein before the trial court, praying therein the following reliefs:

“I. A declaratory decree, declaring the impugned order bearing No. Admin/TBMs/To/2022 dated 15.09.2022 which was received by the plaintiff along with the caveat application on 20.09.2022 issued by the Administrator (so called) Rahul Rex Koul issued against plaintiff as without authority, without jurisdiction, by incompetent person, illegal, unfair, exploitation high handedness on part of the defendants and set aside the same and pass decree thereon to this extent against the defendants.

II. A declaratory decree, declaring the appointment of the defendant as administrator as nonexistent and imaginary person having no existence in law as per the constitution of the TBMS, who has been designated the administrator by his father without any formal appointment.

III. A Mandatory injunction, and allowing the plaintiff to continue to be in service of the society till the plaintiff attain the age of superannuation as per the constitution of the society along with all routine benefits including increase in the pay emoluments and increments, seniority, C.P. Fund and not to harass, humiliate and assault and plaintiff directly and indirectly by taking beggar from the plaintiff and pass a decree accordingly for the same.

IV. A Mandatory injunction, directing the defendant concerned to compensate the plaintiff for violating the rights of the plaintiff vested unto him as under privileged class of the society and to compensate the plaintiffs for special damages for mental agony, physical exertion, prize exploitation and other losses suffered by the omissions and commissions of the defendants by their illegal, unfair and deviant behavior, which shall be determined by this Hon’ble Court keeping in view the facts and circumstances of the present case and economic position of the plaintiff as employee of the society keeping in view the pay grade attached to the post held by plaintiff as on today and pay grade which the plaintiff will get at the time of his retirement and pass decree accordingly in favour of the plaintiff.”

3. During the pendency of the Suit, the defendants-petitioners herein filed an application under Order XII Rule 7 of Code of Civil Procedure, 1920 (for short, the Code) for rejection of the plaint on the ground that the

plaintiff-respondent herein, while working in petitioner 01 school, got involved in various unwanted criminal activities against the fellow staff members of the school resulting into registration of an FIR, bearing No. 0049 of 2022 against the plaintiff-respondent herein with the Police Station, Kothi Bagh, Srinagar, whereafter plaintiff-respondent herein came to be placed under suspension by the school authorities on 27.05.2022 which suspension order came to be called in question by the plaintiff-respondent herein in a civil Suit before the civil Court which Court in terms of order dated 07.06.2022 stayed the operation of the said suspension order dated 27.05.2022, which order, however, came to be challenged by the defendants-petitioners herein before this court in a petition under Article 227 of the Constitution of India being CM(M) No. 98/2022 wherein the interim order dated 07.06.2022 passed by the Court below came to be stayed, whereafter the disciplinary Committee of the petitioner school recommended the termination of the services of the plaintiff-respondent herein and consequently, terminated the same in terms of order dated 15.09.2022 and all the service benefits including three months' salary in lieu of notice period, gratuity etc. came to be paid to the plaintiff-respondent herein and that since the plaintiff-respondent herein has questioned the said termination order in the Suit, the said Suit is not maintainable in terms of Section 14 of the Specific Relief Act 1963 being a suit barred by law.

4. The trial Court, after considering the said application and affording an opportunity of hearing to the parties, in terms of impugned order dated 16.02.2023, though held that the reliefs sought by the plaintiff-respondent herein against the termination order as also for his reinstatement and

resumption of duties in the petitioner school could not be granted, yet held that the Suit maintainable in so far as the prayer of the plaintiff made in the Suit for damages is concerned.

5. Petitioners herein have challenged the impugned order in the instant petition, *inter alia*, on the premise that trial Court passed the impugned order against law and facts and that the trial court has wrongly concluded the suit to be maintainable in so far as the relief of damages is sought by the plaintiff/respondent herein is concerned.

Heard learned counsel for the petitioners and perused the record.

6. It is significant to mention here that plaintiff-respondent herein has chosen not to appear, despite having been served through publication and consequently came to be set *ex parte* on 30.05.2025.

7. In so far as the rejection of plaint under Order XII of the Code is concerned, law is settled that a plaint can be rejected at any stage of the proceedings and the language employed in order XII Rule 11 of the Code is clear, explicit and unequivocal and in essence is mandatory in nature and character and does not leave the matter to the discretion of the court.

The Apex Court in case titled **The Church of Christ Charitable Trust and Educational Charitable Society, v. M/s Ponnamman Educational Trust** reported as (2012) 8 SCC 706 has, *inter alia*, held that in order to consider a case for rejection of plaint, the Court has to scrutinize the averments/pleas in the plaint and at that stage the pleas taken by the defendant in the written statement are wholly irrelevant and matter is to be decided only on the plaint averments and if the allegations are vexatious and meritless and not disclosing a clear right or material(s) to sue, it is the duty of the trial Judge to exercise his power

under Order VII Rule 11 of the Code and if clever drafting has created an illusion of a cause of action, it should be nipped in the bud at the first hearing by examining the parties under Order X of the Code.

8. Keeping in mind the aforesaid position of law and reverting back to the case in hand, the plaintiff-respondent herein, indisputably, has called in question the order of termination of his services while seeking a declaratory decree as also a decree of mandatory injunction, for permitting him to continue in service till he attains the age of superannuation and also to pay him all emoluments, pay, increments etc., and besides seeking the said reliefs, has also sought a decree of mandatory injunction against the defendants-petitioners herein for compensation as special damages *qua* the alleged violation of his rights on account of mental agony, physical exertion and other losses suffered by him, in as much as, his weak economical position in the society.

9. However, a closer examination of the plaint, as a whole, does not disclose material facts, on the basis of which, the plaintiff-respondent herein has sought the relief of compensation/damages, which, in law, could be said to be giving rise to a cause of action to the plaintiff-respondent herein, to maintain the Suit thereof. A deeper examination of the record of the file, in general, and the plaint, in particular, also manifestly tends to show that plaintiff-respondent herein has failed to disclose a clear right to sue against the defendants-petitioners herein *qua* the relief of compensation/damages and seemingly has taken a recourse to clever drafting by creating a cause of action, as clear right to sue is forthcoming or disclosed by the plaintiff-respondent herein in the Suit against the defendants-petitioners *qua* the relief sought for

compensation/damages. The trial Court has overlooked this aspect of the matter and grossly erred and wrongly held the suit maintainable, in so far as, the relief sought by the plaintiff-respondent herein *qua* compensation/damages is concerned, although the trial court has not been oblivious to the fact that the Suit is not maintainable, in law, in so far as, the reliefs sought by plaintiff-respondent herein against the order of termination and his reinstatement is concerned, on account of settled position of law that a contract of personal service cannot be specifically enforced and a Court will not give a declaration that the contract subsists and an employee continues to be in service against the will and consent of the employer. Reference in this regard can be made to case titled as **Pearlite Liners (P) Ltd. v. Manorama Srisi** reported as (2004) 3 SCC 172 and in **Apollo Tyres Limited v. C. P. Sebastian** reported as (2009) 14 SCC 360.

10. Viewed, thus, for what has been observed, considered and analyzed herein-above, the impugned order is found to be legally unsustainable. Resultantly, the instant petition *succeeds* and the impugned order is set aside, as a consequence whereof, the application filed by the petitioners herein before the trial Court for rejection of plaint is allowed and accordingly the plaint is rejected.

11. Registry to send down a copy of this order to the trial Court.

(JAVED IQBAL WANI)
JUDGE

JAMMU
09.10.2025
Paramjeet

Whether the judgment is speaking: Yes/No
Whether the judgment is reportable: Yes/No