



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE ASHOK S.KINAGI

WRIT PETITION NO. 17834 OF 2025 (S-RES)

BETWEEN:

SRI SHASHIKUMAR T
S/O LATE T. OBALAPPA
AGED ABOUT 45 YEARS,
WORKING AS PHYSICAL EDUCATION TEACHER
(NOW UNDER THE ORDERS OF DISMISSAL)
VIJAYA HIGH SCHOOL, SANTHE BENNUR,
CHANNAGIRI TALUK,
DAVANGERE DISTRICT- 577 552.
PRESENTLY RESIDING AT
SRI. SHASHKUMAR.T
C/O DODDABOMMAJJARA BASAVARAJAPPA
MANGENAHALLI, MEDIKERE POST,
SANTHE BENNUR,
CHANNAGIRI TALUK,
DAVANGERE DISTRICT- 577 552.

...PETITIONER

(BY SRI. SRIKANTH M P., ADVOCATE
SMT/MISS P N SHOBHA, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
BY ITS PRINCIPAL SECRETARY TO
GOVERNMENT SCHOOL
EDUCATION DEPARTMENT,
M.S.BUILDING,
BANGALORE - 560 001.

Digitally
signed by
SHILPABAI S
Location
HIGH COURT
OF
KARNATAKA





2. THE COMMISSIONER
SCHOOL EDUCATION AND LITERACY DEPARTMENT
NEW PUBLIC OFFICES,
NRUPATHUNGA ROAD,
K.R.CIRCLE,
BANGALORE - 560 001.
3. THE DIRECTOR OF PUBLIC INSTRUCTIONS
SCHOOL EDUCATION AND LITERACY DEPARTMENT
SECONDARY EDUCATION,
NEW PUBLIC OFFICES,
NRUPATHUNGA ROAD,
K.R.CIRCLE,
BANGALORE - 560 001.
4. THE BLOCK EDUCATION OFFICER,
SCHOOL EDUCATION AND LITERACY DEPARTMENT
CHANNAGIRI TALUK,
DAVANGERE DISTRICT.
5. VIJAYA YUVAKA SANGHA
SANTHE BENNUR,
CHANNAGIRI TALUK,
DAVANGERE DISTRICT- 577 552.
REP. BY ITS SECRETARY
(REGISTER UNDER SOCIETIES REGISTRATION ACT)
6. VIJAYA HIGH SCHOOL
SANTHE BENNUR,
CHANNAGIRI TALUK,
DAVANGERE DISTRICT- 577 552.
REP. BY ITS HEAD MASTER

...RESPONDENTS

(BY SRI. G RAMESH NAIK, AGA FOR R1-R4
SRI. MADHUKAR NADIG, ADVOCATE FOR R5 & R6)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226
AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO
A) HOLD AND DECLARE THAT THE DISMISSAL ORDER BEARING
NO.28/21-22 DATED 31.03.2022 ISSUED BY THE 6TH
RESPONDENT VIDE ANNEXURE-F IS ILLEGAL, IMPROPER



QUASH THE SAME. B) DIRECT THE 3RD RESPONDENT TO CONSIDER THE REPRESENTATION DATED 01.03.2025 AND FURTHER DIRECT THE RESPONDENTS TO CONTINUE THE SERVICES OF THE PETITIONER IN THE 7TH RESPONDENT INSTITUTION RUN BY THE 6TH RESPONDENT WITH ALL SERVICE AND CONSEQUENTIAL BENEFITS VIDE ANNEXURE-N. C) AWARD COSTS ON THE WRIT PETITION.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE ASHOK S.KINAGI

ORAL ORDER

The petitioner filed this writ petition seeking the following reliefs:

- "a) *Hold and declare that the dismissal order bearing no.28/21-22 dated 31.03.2022 issued by the 6th respondent vide Annexure-F is illegal, improper quash the same.*
- b) *Direct the 3rd respondent to consider the representation dated 01.03.2025 and further direct the respondents to continue the services of the petitioner in the 7th respondent institution run by the 6th respondent with all service and consequential benefits vide Annexure-N.*
- c) *Award costs on the writ petition.*
- d) *Consequential relief or nay other appropriate order or direction as this Hon'ble Court deems fit in the*



facts and circumstances of the case in the ends of justice and equity."

2. Brief facts leading rise to the filing of this petition are as follows:

2.1. The petitioner was appointed after following the due recruitment process as per appointment order dated 20.01.2009 in respondent No.6-Institution and the appointment of the petitioner was approved along with the other three employees. His grant-in-aid salary was also released. Show-cause notices were issued on 24.06.2019 and 04.07.2013 alleging certain misconduct. The petitioner replied to the notices. The petitioner was served with the dismissal order dated 31.03.2022 claiming to have dismissed from services on the ground of misconduct. Respondent No.5 realised that the order dated 31.03.2022 passed by the management *dehors* the statutory provisions and the Karnataka Educational Institutions (Recruitment and Terms and Conditions of Service of Employees in Private Aided primary and Secondary



Educational Institutions) Rules, 1999 (**'Rules'** for short) without complying with the requirements of Rule 20 (1) of the Rules. The Management proposed to hold an enquiry for the sake of completing the formalities.

2.2. A communication dated 08.09.2022 seems to have been addressed to respondent No.4-Deputy Director. The Management, by the said representation, sought for appointment of Departmental Nominee to conduct the enquiry against the petitioner. The petitioner was issued with a notice dated 08.12.2023 directing him to appear for the enquiry. The Three Man Committee, without referring to statutory provisions and in violation of principles of natural justice, recorded the findings that the allegations against the petitioner as having been proved. A charge memo dated 28.04.2023 was issued to the petitioner. Respondent No.5-BEO requested respondent No.4 to consider the proposal of the Management while forwarding the same. Respondent No.4, vide communication dated 03.01.2025 addressed to respondent No.3, had



recommended to approve the proposal submitted by the Management. The petitioner, who was informed that the order of dismissal dated 31.03.2022 would be withdrawn, was surprised as he came to know that the Management recommended for approval of the dismissal and also retrospectively represented to respondent No.3 on 01.03.2025 and requested to continue him in services. It is contended that, the petitioner is a victim of illegal actions at the hands of respondent No.5-Management. The petitioner, aggrieved by the order of dismissal, filed this writ petition.

3. Heard the arguments of learned counsel for the petitioner, learned AGA for respondent Nos.1 to 4 and learned counsel for respondent Nos.5 and 6.

4. Learned counsel for the petitioner submits that, the order of dismissal passed by respondent No.5 is arbitrary and erroneous and is in violation of principles of natural justice. He submits that, the order of dismissal is purely in violations of the statutory provisions and the



petitioner is a victim of illegal actions at the hands of respondent No.5. It is further contended that, the impugned order passed is without holding an enquiry. Rule 14 of the Rules contemplates confirmation of every order passed by the Management regarding suspension, etc., is required to be confirmed by the authority that has approved the appointment of the employee. Hence, on these grounds, he prays to allow the writ petition.

5. *Per contra*, learned counsel for respondent Nos.5 and 6 submits that, the writ petition filed by the petitioner is not maintainable. Any order passed by the educational institution regarding dismissal from service, removal or reduction in rank, an appeal lies under Section 94 of the Karnataka Education Act, 1983 (**'Act of 1983'** for short). The petitioner, without exhausting the efficacious remedy provided under the provisions of the Act of 1983, filed this writ petition. Hence, on this ground, he prays to dismiss the writ petition.



6. Perused the records and considered the submissions of the learned counsel for the parties.

7. It is undisputed fact that, the petitioner was appointed in respondent No.6-Institution vide appointment order dated 20.01.2009, and respondent No.5 passed an order of dismissal from service.

8. As per Section 94 of the Act of 1983, any teacher or other employee of a private educational institution who is dismissed, removed or reduced in rank may, within three months from the date of communication of the order, prefer an appeal to the Tribunal.

9. Admittedly, the petitioner is a Teacher and he has been terminated from service. The petitioner, instead of approaching the Educational Appellate Tribunal under Section 94 of the Act of 1983, has filed this writ petition. The petitioner, without exhausting the efficacious remedy, filed this writ petition under Article 226 of the Constitution of India. Admittedly, an alternative forum is provided by the statute has to be one which can dispense speedy and



efficacious relief. It is open to the petitioner to move the Educational Appellate Tribunal.

10. The Hon'ble Apex Court in the case of **Rikhab Chand Jain Vs. Union of India and Others**¹ has, in paragraph No.10, held as follows:

"10. We may profitably refer, in this context, to the Constitution Bench decision in Thansingh Nathmal v. A. Mazid, Superintendent of Taxes [AIR 1964 SC 1419]. In Thansingh Nathmal (supra), this Court had the occasion to lay down a principle of law which is salutary and not to be found in any other previous decision rendered by it. The principle, plainly, is that, if a remedy is available to a party before the high court in another jurisdiction, the writ jurisdiction should not normally be exercised on a petition under Article 226, for, that would allow the machinery set up by the concerned statute to be by-passed. The relevant passage from the decision reads as follows:

"The jurisdiction of the High Court under article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the article. But the exercise of the jurisdiction is discretionary; it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-

¹ 2025 SCC OnLine SC 2510



imposed limitations. Resort to that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the court will not entertain a petition for a writ under article 226, where the petitioner has an alternative remedy, which, without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit, by entertaining a petition under article 226 of the Constitution, the machinery created under the statute to be by-passed, and will leave the party applying to it to seek resort to the machinery so set up."

(emphasis ours)"

The Hon'ble Apex Court, relying upon the view in a previous Constitution Bench in the case of **A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani**² has, in paragraph No.12 of **Rikhab Chand Jain** (supra), held as follows:

² AIR 1961 SC 1506



"12. That apart, the majority view in a previous Constitution Bench in *A. V Venkateswaran, Collector of Customs, Bombay v. Ramchand Sobhraj Wadhwani* [AIR 1961 SC 1506] reads thus:

"14. ..., we must express our dissent from the reasoning by which the learned Judges of the High Court held that the writ petitioner was absolved from the normal obligation to exhaust his statutory remedies before invoking the jurisdiction of the High Court under Article 226 of the Constitution. If a petitioner has disabled himself from availing himself of the statutory remedy by his own fault in not doing so within the prescribed time, he cannot certainly be permitted to urge that as a ground for the Court dealing with his petition under Article 226 to exercise its discretion in his favour. Indeed, the second passage extracted from the judgment of the learned C.J. in *Mohammed Nooh* case with its reference to the right to appeal being lost 'through no fault of his own' emphasizes this aspect of the Rule."

(emphasis ours)

In essence, this Court was of the opinion that once a petitioner has due to his own fault disabled himself from availing a statutory remedy, the discretionary remedy under Article 226 may not be available."

Further, in paragraph No.15, the Hon'ble Apex Court **Rikhab Chand Jain** (supra), has held as follows:

"15. In our considered opinion, the appellant having had a remedy before the High Court in a separate jurisdiction which was equally efficacious, he indulged in



the (mis)adventure of invoking its writ jurisdiction which was rightly not entertained.”

10.1. From the perusal of the judgment of the Hon’ble Apex Court in the case of **Rikhab Chand Jain** (supra), it is clear that, if a remedy is available to a party, held that that the High Court does not act as a Court of appeal against the decision of a Court or Tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. The machinery created under the statute to be by-passed, and will leave the party applying to it to seek resort to the machinery so set up.

11. Admittedly, the Tribunal is constituted under the provisions of the Act of 1983. The petitioner, without exhausting the efficacious remedy, has filed this writ petition. Considering the mandate laid down by the Hon’ble Apex Court in the case of **Rikhab Chand Jain** (supra), this writ petition is not maintainable.



12. In view of the above discussion, I proceed to pass the following:

ORDER

- i. The writ petition is ***dismissed***;
- ii. A liberty is reserved in favour of the petitioner to approach the Educational Appellate Tribunal under the provisions of the Act of 1983;
- iii. If the petitioner approaches the Educational Appellate Tribunal, the petitioner is entitled for benefit under Section 14 of the Limitation Act, 1963;
- iv. The Registry is directed to return the certified copies of the annexures, if any, after retaining the photocopies of the same;
- v. Pending IA(s) in this petition, if any, shall stand disposed of.

**Sd/-
(ASHOK S.KINAGI)
JUDGE**

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List No.: 1 Sl No.: 10