



W.P.(MD) Nos.11785 & 11786 of 2012,
11641 & 6076 of 2014,
C.R.P.(NPD) (MD) No.181 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.08.2019

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CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) Nos.11785 & 11786 of 2012
and
M.P. (MD) Nos.1 of 2012 & 1 of 2014 (in both W.Ps.)
and
C.R.P. (NPD) (MD) No.181 of 2014
and
M.P. (MD) No.1 of 2014
and
W.P. (MD) No.11641 of 2014
and
M.P. (MD) No.2 of 2014
and
W.P. (MD) No.6076 of 2014
and
M.P. (MD) No.1 of 2014

Dr.S.Senthilkumar ... Petitioner in W.P.(MD) No.11785/2012

Dr.Durai Panneerselvam ... Petitioner in W.P.(MD) No.11786/2012

Thamilavel Uma Maheswaranar

Karanthai Arts College

Karanthai

rep.by the President N.Kaliyamoorthi

Karanthai, Thanjavur

... Petitioner in W.P.(MD) Nos.11641,
6076/2014 &

... Petitionererr.Appellant in
C.R.P.(NPD) (MD) No.181/2014

vs.

1.Thamilavel Uma Maheswaranar

Karanthai Arts College

Karanthai, Thanjavur-613 002

rep.by the Secretary S.Ramanathan

Karanthai, Thanjavur

<https://hcservices.ecourts.gov.in/hcservices/>



2.Thamilavel Uma Maheswaranar
Karanthai Arts College
Karanthai, Thanjavur-613 002
rep.by the President N.Kaliyamoorthy
Karanthai, Thanjavur

3.The Principal
Thamilavel Uma Maheswaranar
Karanthai Arts College
Karanthai, Thanjavur-613 002

4.The Regional Joint Director of
Collegiate Education
Racecourse Road, Jamal Mohammed College Road
Tiruchirapalli

5.The State of Tamil Nadu
rep.by The Secretary to Government
Higher Education Department
Secretriatic, Chennai-9

... Respondents in W.P.(MD)
Nos.11785 & 11786/2012

6.The State of Tamil Nadu
rep.by the Secretary to Government
Higher Education Department
Secretariat, Chennai-600 005

7.The Director of Collegiate Education
E.V.K.Sampath Maligai
College Road, Chennai-600 006

8.The Regional Joint Director of Collegiate Education
Race Course Road
Jamal Mohamed College Campus, Trichy-20

9.Dr.Durai Panneerselvam

10.Dr.Senthil Kumar ... Respondents in W.P.(MD) Nos.
11641 & 6076 /2014

11. The Director of Collegiate Education
E.V.K.Sampath Maligai
College Road, Chennai-600 006

12. The Regional Joint Director of Collegiate Education
Race Course Road
Jamal Mohamed College Campus
Trichy-20



13.Dr.Durai Panneerselvam

14.Dr.Senthil Kumar

15.The Secretary

Government of Tamil Nadu

Higher Education Department

Secretariat, Chennai-600 009 ... Respondents in C.R.P.(NPD)
(MD) No.181/2014

[R5 suo motu impleaded vide order
dated 03.02.2014 in C.R.P.(NPD) (MD)
No.181 of 2014 in MP(MD).No.1/2014]

PRAYER (in W.P.(MD) Nos.11785 & 11786 of 2012): Writ Petitions filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus calling for the records relating to the order of the first respondent dated 03.08.2012, quashing the same and directing the first respondent to regularize the service of the petitioners with backwages from 17.08.2011 to 27.04.2012.

PRAYER (in W.P.(MD) No.11641 of 2014): Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorari calling for the records relating to the impugned order passed by the 3rd Respondent in his proceedings Na.Ka.No.5884/A2/2012 dated 29.08.2013 and the consequential order passed by the 2nd Respondent in his proceedings in Na.Ka.No.30702/F3/2011 dated Nil.11.2013 confirming the order of the 3rd Respondent and quash the same as illegal.

PRAYER (in W.P.(MD) No.6076 of 2014): Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of mandamus directing the 1st respondent to give effect of sections 21 & 38 of the Tamil Nadu private colleges Regulations Act 1976 by constituting the Tribunal for deciding the statutory appeals preferred U/s.21 of the said Act.

PRAYER (in C.R.P.(NPD) (MD) No.181 of 2014): Civil Revision Petition filed under Article 227 of the Constitution of India against the order of the learned Principal District Judge, Thanjavur in CMA CR No.19/404/14, dated 07.01.2014 against the order of the first respondent in his proceedings Na.Ka.No.30702/F3/11 served on 12.12.2013 dated 06.12.2013 and confirming the order of the 2nd respondent in his proceedings Na.Ka.No.30702/F3/11, dated 29.08.2013.



colleges (Regulation) Act, 1976 (hereinafter, referred to as "the Act") by constituting the Tribunal for deciding the statutory appeal preferred under Section 21 of the Act.

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4. The relief sought for in C.R.P.(NPD) (MD) No.181 of 2014 is to set aside the order, dated 07.01.2014, passed in CMA CR No.19/404/14, by the learned Principal District Judge, Thanjavur and to direct the learned Principal District Judge, Thanjavur, to number CMA CR No.19/404/14 and hear the same on merits and in accordance with law.

5. For the sake of convenience, W.P.(MD) No.6076 of 2014 is taken as a lead case and the parties are referred as per the ranking in the said writ petition.

6. The writ petitioner in W.P.(MD) No.6076 of 2014 is Thamilavel Uma Maheswaranar Karanthai Arts College, Karanthai, represented by its President. The cause for filing of the writ petition arose on account of the fact that writ petitioner - College filed CMA CR No.19/404/14, dated 07.01.2014, challenging the order passed by the Director of Collegiate Education and the said civil miscellaneous appeal was returned by the learned Principal District Judge, Thanjavur, on the ground that the Tribunal was not constituted with reference to the provisions of the Act.

7. The writ petitioner - College is in existence for more than 75 years and it is a reputed Institution catering the needs of the poor and downtrodden in the locality. Two professors of the College, namely, Dr.S.Senthilkumar and Dr.Durai Panneerselvam questioned the authority of the writ petitioner - College and further involved in various unlawful activities affecting the reputation of the the College. Thus, charges were framed against them. Enquiry was conducted. The charges were proved against them. Sufficient opportunities were provided to them by the College Committee to prove their innocence. However, they failed to establish their innocence in respect of the allegations set out in the charge memorandum. The enquiry was conducted by complying with the principles of natural justice. Based on the proved charges, the Professors Dr.S.Senthilkumar and Dr.Durai Panneerselvam were dismissed from service, vide decision dated 01.10.2011. However, the said decision of the writ petitioner - College was challenged before this Court and on the technical ground that the Professors cannot be dismissed from service without prior approval of the competent authority, the claim of the respondents 4 and 5 was allowed by this Court. Against the



Honourable Division Bench of this Court, while upholding the orders passed by the Writ Court, held that the dismissal order cannot be passed without prior approval of the competent authority and accordingly, complete liberty was granted to the writ petitioner - College to give an opportunity to the respondents 4 and 5 and pass appropriate orders.

8. Pursuant to the directions issued by the Honourable Division Bench of this Court and in order to provide an opportunity, the College Committee had taken an unanimous decision to impose major penalty of dismissal from service and forwarded the said decision to the Regional Joint Director of Collegiate Education for his approval under the provisions of the Act. It is contended that the proved charges against the respondents 4 and 5 are serious in nature and the Regional Joint Director of Collegiate Education, without taking note of the seriousness of the allegations and without considering the fact that the principles of natural justice had been complied with, directed the College Committee to reconsider its decision by holding that the punishment of dismissal from service was a major punishment, vide order dated 28.11.2012. Again, the College Committee reconsidered the decision and confirmed its original decision to dismiss the respondents 4 and 5 from service by its order dated 06.02.2013, in Resolution No.2 of the College Committee Meeting. Once again, the Regional Joint Director of Collegiate Education, through his order dated 29.08.2013, had refused to grant approval to the decision of the College Committee to impose the punishment of removal from service in respect of the respondents 4 and 5. Against the said order dated 29.08.2013, the College Committee preferred a statutory appeal, under Section 20 of the Act, before the Director of Collegiate Education, who by way of a non-speaking order, dated 06.12.2013, confirmed the order passed by the Regional Joint Director of Collegiate Education.

9. Challenging the order, dated 06.12.2013, passed by the Director of Collegiate Education, the College Committee had preferred a statutory second appeal, under Section 21 of the Act, before the learned Principal District Judge, Thanjavur / a Tribunal under Section 38 of the Act. The said appeal was returned for the purpose of producing the Government notification empowering the District Judge to entertain the appeal and two months time was granted to produce the notification. The orders of the Regional Joint Director and the Director of Collegiate Education were non-speaking orders and there was no adjudication at all.

<https://hcservices.ecourts.gov.in/hcservices> 10. While attacking the orders of the Regional Joint



Director as well as the Director of Collegiate Education, the writ petitioner - College states that the non-speaking orders are to be adjudicated by the Tribunal constituted under the Act. Though the appeal is filed against the order passed by the Director of Collegiate Education, the said appeal was returned for want of notification issued by the Government under the provisions of the Act notifying the Principal District Judge concerned as the Presiding Officer of the Special Tribunal. Thus, the writ petitioner - College preferred C.R.P.(NPD) (MD) No.181 of 2014, before this Court, under Article 227 of the Constitution of India, seeking to set aside the returning of the appeal and for a direction to the learned Principal District Judge, Thanjavur, to entertain the appeal under the Act.

11. The learned Senior Counsel appearing for the writ petitioner - College made a submission that the Act being a special statute provides a mechanism for the purpose of redressing the grievances of the aggrieved parties. The Tribunal is contemplated under Section 38 of the Act enabling the aggrieved teachers or the Management to adjudicate their issues with reference to the documents and evidence. Such a valuable right provided under the special statute cannot be denied to the writ petitioner - College Management. It is further contended that if any major penalty of dismissal, removal or reduce in rank or suspension of teachers or other persons employed in private colleges are issued under Section 19 of the Act, those employees / teachers are entitled to prefer an appeal under Section 20 of the Act. Section 20 of the Act contemplates that "any teacher or other person employed in private college" shall prefer an appeal against the order passed, under Section 19 of the Act, by the Management.

12. Section 21 of the Act provides second appeal, in case of dismissal, removal or reduction in rank or termination of appointment of teachers or other persons employed in private colleges. Thus, a second appeal is provided under the Act.

13. Section 21 of the Act stipulates that if the appeal under Section 20 of the Act was against the dismissal, removal or reduction in rank or the termination otherwise of the appointment of any teacher or other person employed in private college, such a teacher or other person or the educational agency aggrieved by any order made in any such appeal, may prefer an appeal against the appellate order, to the Tribunal.

14. Relying on Section 21 of the Act, the learned Senior Counsel submitted that the second appeal is provided to the teachers



or other persons or the educational agency, if aggrieved. Therefore, under Section 21 of the Act, a right of second appeal is conferred and therefore, such an opportunity must be available to all the persons, including the teacher, other person or educational agency.

15. With reference to Section 21 of the Act, it is relevant to consider Section 37 of the Act, which provides appeal against orders of competent authority. Section 37 of the Act also contemplates that any person aggrieved by any order, decision or direction of the competent authority under any provision of the Act, may prefer an appeal against such order, decision or direction, to such authority or officer as may be prescribed and different authority or officers may be prescribed for different classes of private colleges. The very spirit of Section 37 enumerates that an appeal against the orders of the competent authority is available to any person aggrieved by any order, decision or direction of the competent authority. Thus, the word "any person" includes the Management also. Thus, the statute provides equal opportunity of appellate remedy both to the teachers as well as the Management. However, the benefit of approaching the Tribunal is not being provided on account of the fact that the Government has not issued any notification pursuant to the Act.

16. Section 38 of the Act speaks about "Tribunal". Section 38 of the Act states that the Government may, by notification, constitute as many Tribunals as may be necessary for the purpose of the Act. Sub-Section (2) of Section 38 of the Act states that each Tribunal shall consist of one person only who shall be a judicial officer not below the rank of the District Judge. Sub-Section 4 to Section 38 of the Act stipulates that every Tribunal shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, while hearing an appeal.

17. Section 39 of the Act enumerates time for appeal and powers of the Appellate Authority. Section 39 of the Act states that no appeal under any provision of the Act shall be preferred after the expiry of one month from the date on which, the order, decision or direction appealed against was received by the appellant. The procedures to be followed and the limitation for the appeal are provided under the Act. Thus, the scheme of the Act is unambiguous.

18. Section 40 of the Act deals with deposit with the Tribunal of pay and allowances of teachers and other persons employed in private colleges in certain cases. Thus, the interest



of the teachers as well as the other persons employed in private colleges is also protected in respect of the pay and allowances to be disbursed in the event of rejection of appeal by the Tribunal. Thus, the scheme of the Act protects the interest of the teachers or the other persons employed in private colleges. Under these circumstances, when the Tribunal is empowered to adjudicate the issues as vested in the Civil Courts under the Code of Civil Procedure, undoubtedly, such a remedy is efficacious in nature and the persons aggrieved must be provided with such an opportunity.

19. In the event of not providing such an opportunity to adjudicate the issues before the Tribunal, the persons aggrieved may not get the equivalent level of adjudication before the High Court, under Article 226 of the Constitution of India. Thus, the appeal remedy provided under Section 38 of the Act, through the Tribunal, cannot be equated or cannot be dispensed with. Thus, the power of judicial review under Article 226 of the Constitution of India being extraordinary cannot be equated with the adjudicative process to be done through the Tribunals to be constituted under Section 38 of the Act.

20. Relying on the above provisions of the Act, the learned Senior Counsel appearing for the writ petitioner - College states that the Tribunal is yet to be notified by the Government despite the fact that the Act was enacted during the year 1976. It is further contended that for the past 43 years, the Government has not notified the Tribunal, despite the fact that there is no additional financial expenditure involved.

21. Section 38 of the Act contemplates that the respective District Judges can be notified as the Presiding Officer of the Tribunal, under Section 38 of the Act to deal with the appeals to be filed against the orders passed by the competent Appellate Authority under the provisions of the Act. In the absence of the notification, the persons, including the teachers and College Management are deprived of their opportunity to adjudicate their issues by producing original documents and by adducing evidences. Contrarily, they are forced to file writ petitions, wherein the power of judicial review, under Article 226 of the Constitution of India, is extraordinary. Thus, the statutory remedy provided under the Act is unable to be exercised by the aggrieved persons in respect of the appellate orders passed by the Appellate Authority under the provisions of the Act. Under these circumstances, the writ petitioner - College is constrained to approach this Court.

<https://hcservices.ecourts.gov.in/hcservices/> **22.** In support of his contentions, the learned Senior



Counsel referred the Judgment of the Constitution Bench of the Honourable Supreme Court of India in the case of **All Saints High School vs. Government of Andhra Pradesh**, reported in **AIR 1980 SC 1042**. The relevant portions of the said Judgment are extracted hereunder:

"16.....It may be recalled that by Section 391), no teacher can be dismissed, removed, etc.except with the prior approval of the competent authority. Section 3(2) confers power on the competent authority to refuse to accord its approval if there are no adequate and reasonable grounds for the proposal. In the absence of the provision for an appeal against the order of the competent authority refusing to approve the action proposed by the management, the management is placed in a gravely disadvantageous position vis-a-vis the teacher who is given the right of appeal by Section 4. By reason of these infirmities I agree with the conclusion of my learned Brothers that Section 4 of the impugned Act is unconstitutional, as being violative of Art.30 (1).

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71.Section 4 of the Act may be quoted thus:

"4. Any teacher employed in any private educational institution -

(a) who is dismissed, removed or reduced in rank or whose appointment is otherwise terminated; or

(b) whose pay or allowances or any of whose conditions of service are altered or interpreted to his disadvantages, by any order, may prefer an appeal against the order to such authority or officer as may be prescribed; and different authorities or officers may be prescribed for different classes of private educational institutions.

Explanation : In this section, the expression 'Order' includes any order made on or after the date of the commencement of this Act in any disciplinary proceeding which was pending on that date."

This section gives a right of appeal to a teacher who is dismissed, removed or reduced in



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rank and whose services are terminated. No guidelines are provided in which manner this power is to be exercised nor does it contain any provision which may entitle the minority institution to be heard by the appellate authority. No principles or norms are laid down on the basis of which the order passed by the institution could be examined by the appellate authority. Even what would amount to misconduct has not been defined or qualified in Sections 2, 3 or 4. It is, therefore, difficult to understand how the appellate court would exercise this power in deciding whether or not the teacher was guilty of misconduct and what is the correlation between the degree of misconduct and the appropriate punishment, which may have been awarded by the institution and approved by the competent authority. The conferment of such an absolute and unguided power on the appellate authority which if passed against the management it cannot even file a civil suit to set aside this order amounts not only to a direct interference with the right enshrined in Article 30(1) of the Constitution but makes the minority institution a limp, lifeless and powerless body incapable of effective teaching and / or attaining excellence in the standards of education. Such a course of action is bound to hurt the feelings of the founders of the institution. For these reasons, therefore, I am of the opinion that Section 4 is also ultra vires as violative of Article 30 of the Constitution and would therefore, have no application to the minority institutions who are appellants in this case.

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111. It is well settled rule that in interpreting the provisions of a statute the Court will presume that the legislation was intended to be intra vires and also reasonable. The rule followed is that the section ought to be interpreted consistent with the presumption which imputes to the legislature an intention of limiting the direct operation of its enactment to the extent that is permissible.



Maxwell on Interpretation of Statutes. Twelfth Edn., P.109 under the Caption : "Restriction of Operation" states:-

"Sometimes to keep the Act within the limits of its scope and not to disturb the existing law beyond what the object requires, it is construed as operative between certain persons, or in certain circumstances, or for certain purposes only, even though the language expresses no such circumscription of the field of operation."

The following passage in *Bidie v. General Accident, Fire and Life Assurance Corpn.* (1948) 2 All ER 995 at p.998 was cited with approval in *Kesavananda Bharti v. State of Kerala* (1973) Supp SCR 1 at p.101:

"The first thing one has to do, I venture to think, in construing words in a section of an Act of Parliament is not to take those words in vacua, so to speak, and attribute to them what is sometimes called their natural or ordinary meaning. Few words in the English language have a natural or ordinary meaning in the sense that they must be so read that their meaning is entirely independent of their context. The method of construing statutes that I prefer is not to take particular words and attribute to them a sort of *prima facie* meaning which you may have to displace or modify. It is to read the statute as a whole and ask oneself the question: "In this state, in this context, relating to its subject-matter, what is the true meaning of that word?"

According to Holmes, J. in *Towne v. Eigner* (1917) 245 US 418 : 62 L Ed 372, 376 a word is not crystal, transparent and unchanged; it is the skin of living thought and may vary greatly in colour and content according to the circumstances and the time in which it is used. Gwyer, J. in *Central Provinces and Berar Act* (1939 FCR 18 at p.42) held:

"A grant of the power in general terms, standing by itself, would no doubt be construed in the wider sense; but it may be qualified by other express provisions in the same enactment, by the implication of the context, and even by the considerations arising out of what appears



to be the general scheme of the Act."

To the same effect are the observations of this Court in *Kedar Nath Singh v. State of Bihar*, (1962) Supp (2) SCR 769:

"It is well settled that in interpreting an enactment the Court should have regard not merely to the literal meaning of the words used, but also take into consideration the antecedent history of the legislation, its purpose and the mischief it seeks to suppress. (*The Bengal Immunity Co. Ltd. v. The State of Bihar* (1955) 2 SCR 603 and *R.M.D.Chamarbaugwalla v. The Union of India* (1957) SCR 930 cited with approval)."

This Court has in several cases adopted the principle of reading down the provisions of the Statute. The reading down of a provision of a statute puts into operation the principle that so far as it is reasonably possible to do so, the legislation should be construed as being within its power. It has the principal effect that where an Act is expressed in language of a generality which makes it capable, if read literally of applying to matters beyond the relevant legislative power, the Court will construe it in a more limited sense so as to keep it within power.

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114. Section 3(1) and (2) will have to be read together. The procedure contemplated is that when the educational institution proposes to dismiss remove or reduce in rank or otherwise terminate the appointment of any teacher it should communicate to the competent authority its proposal. The latter part of S.3 (2) mentions that the competent authority shall if it is satisfied that there are adequate and reasonable grounds for such proposal approve such dismissal, removal, reduction in rank or otherwise termination of appointment. The approval of an order of dismissal or removal etc. will have to be read along with S.3(1) which provides that no teacher shall be dismissed etc. without the previous approval of the competent authority. When a domestic enquiry has been conducted and the teacher is given an



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opportunity to rebut the charges and show cause against the punishment proposed and when fair procedure has been followed and the authority comes to the conclusion that the disciplinary action should be taken against the teacher the proposal will have to be sent to the competent authority. The competent authority will examine the proposal along with the procedure adopted by the institution and approve such dismissal, removal or reduction in rank or termination of appointment. Sub-sec.(2) requires the competent authority to approve such a proposal if it is satisfied that there are adequate and reasonable grounds for such proposal. The two words "adequate and reasonable" in our opinion furnish sufficient guidelines. The competent authority can interfere if there are no material at all for sustaining the order of punishment or when on the materials less and perverse. The word "adequate" in sub-s.(2) will have to be understood as being confined to such examination of the proposal. The word "reasonable" would indicate the power of the competent authority is confined to the power of an authority to interfere with the enquiry and conclusions arrived at by the domestic Tribunal. The competent authority may satisfy itself that the rules of natural justice have been satisfied, that the teacher was given an opportunity to defend the charges against him and to show cause against the punishment proposed to be awarded to him and that a fair procedure has been observed. The authority may also be entitled to interfere when the punishment was imposed by the institution due to mala fides or with a view to victimise him or such like grounds. The word "reasonable" can not be understood as conferring a power to interfere with the enquiry by the domestic Tribunal as a Court of Appeal on merits. The law relating to the circumstances under which the proceedings of the Tribunal can be interfered with has been clearly laid down. Sufficient guidelines are discernible from the Statements of Objects and Reasons which state that the enactment was for the purpose of



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preenactment was for the purpose of preventing private institutions from taking disciplinary action on flimsy grounds without framing charges and without giving an opportunity to explain and for regulating the service conditions of teachers and for ensuring their security of service. We are satisfied that sufficient guidelines are indicated in the Act. The words "adequate and reasonable" should be given a restricted meaning so as to validate the provisions of the section. Thus understood the objection raised by Mr.Lal Narain Sinha, learned counsel for the appellant that S.3(1) and (2) lack guidelines and have conferred a blanket power, cannot be upheld.

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...

117. Section 4 confers a right of appeal against the order of punishment imposed on teachers employed in private educational institutions. A teacher who is dismissed, removed or reduced in rank or whose appointment is otherwise terminated or whose pay and allowances or any of whose conditions of service are altered or interpreted to his disadvantages may prefer an appeal to such authority as may be prescribed. This section was challenged by Mr.L.N.Sinha, learned counsel, on the ground that the right of appeal conferred is a blanket power without any restriction. In any event, the submission (is) that the right of appeal is conferred only on the teacher and not on the institution. Though no restrictions are placed on the appellate power, we feel it may be possible to read down the section. But the learned counsel is on firm ground when he submits that the right of appeal is confined only to the teachers and not available to institutions. This infirmity invalidates Sec.4"

23. Relying on the above cited decision, the learned Senior Counsel emphatically contended that constitution of the Tribunal, by issuing a notification, is mandatory and once the Act provides an adjudicative mechanism, which is more efficacious, then, the same is to be provided to the aggrieved persons.



24. The opportunity of an effective adjudication provided under a statute need not be dispensed with for want of issuing a notification by the Government. The learned Senior Counsel states that no financial implications are involved as the District Judges are already notified as the Presiding Officers of the Tribunal for the co-operative cases under the Tamil Nadu Co-operative Societies Act, 1983 and the Subordinate Judges are notified for the purpose of dealing with the appeals to be filed under the Private Schools (Regulation) Act. Thus, the same benefit of issuing a notification under the provisions of the Act, is just and necessary in the interest of the parties, who all are aggrieved and for effective adjudication of the disputes. In support of the said arguments, the learned Senior Counsel placed reliance upon the decision in the case of **Navtej Singh Johar & others vs. Union of India, Thr.Secretary Ministry of Law & Justice**, reported in **CDJ 2018 SC 912**, wherein the Honourable Supreme Court has observed as follows:

"238. In *Shayara Bano (supra)*, the Court observed that manifest arbitrariness of a provision of law can also be a ground for declaring a law as unconstitutional. Opining so, the Court observed thus:

"The test of manifest arbitrariness, therefore, as laid down in the aforesaid judgments would apply to invalidate legislation as well as subordinate legislation under Article 14. Manifest arbitrariness, therefore, must be something done by the legislature capriciously, irrationally and/or without adequate determining principle. Also, when something is done which is excessive and disproportionate, such legislation would be manifestly arbitrary. We are, therefore, of the view that arbitrariness in the sense of manifest arbitrariness as pointed out by us above would apply to negate legislation as well under Article 14."

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244. In the case of *Shreya Singhal v. Union of India [(2015) 5 SCC 1]*, this Court, while striking down Section 66A of the Information Technology Act, 2000 had observed that when a provision is vague and overboard in the sense that it criminalises protected speech and



a chilling effect and is liable to be struck down. The Court opined:-

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We, therefore, hold that the Section is unconstitutional also on the ground that it takes within its sweep protected speech and speech that is innocent in nature and is liable therefore to be used in such a way as to have a chilling effect on free speech and would, therefore, have to be struck down on the ground of overbreadth."

25. In the matter of special reference, reported in **CDJ 2002 SC 743**, the Honourable Supreme Court has observed as follows:

"136. In providing key to the meaning of any word or expression the context in which it is said has significance. Colour and content emanating from context may permit sense being preferred to mere meaning depending on what is sought to be achieved and what is sought to be prevented by the legislative scheme surrounding the expression. It is a settled principle that in interpreting the statute the words used therein cannot be read in isolation. Their colour and content are derived from their context and, therefore, every word in a statute must be examined in its context by the word "context". It means in its widest sense as including not only other enacting provisions of the same statute but its preamble, the existing state of the law, other statutes in pari materia and the mischief which the statute intended to remedy. While making such interpretation the roots of the past, the foliage of the present and the seeds of the future cannot be lost sight of. Judicial interpretation should not be imprisoned in verbalism and words lose their thrust when read in vacuo. Context would quite often provide the key to the meaning of the word and the sense it should carry. Its setting would give colour to it and provide a cue to the intention of the Legislature in using it. A word is not a crystal, transparent and unchanged; it is the skin of living thought and may vary greatly in colour and content according to the circumstances and the time in



which the same is used as was observed by Holmes, J, in *Towne v. Eisner* (245 US 418, 425 : 62 L Ed 372 (1917)).

137. The following passage from *Statutory Interpretation* by Justice G.P.Singh (8th Edn., 2001 at pp.81-82) is an appropriate guide to the case at hand:

"No word" says Professor H.A.Smith has an absolute meaning, for no words can be defined in cacuo, or without reference to some context. According to Sutherland there is a 'basic fallacy' in saying 'that words have meaning in and of themselves', and 'reference to the abstract meaning of words', states Craies, 'if there be any such thin, is of little value in interpreting statutes'. ...in determining the meaning of any word or phrase in a statute the first question to be asked is - 'What is the natural or ordinary meaning of that word or phrase in its context in the statute? It is only when that meaning leads to some result which cannot reasonably be supposed to have been the intention of the legislature, that it is proper to look for some other possible meaning of the word or phrase.' The context, as already seen in the construction of statutes, means the statute as a whole, the previous state of the law, other statutes in *pari materia*, the general scope of the statute and the mischief that it was intended to remedy."

138. The judicial function of the Court in interpreting the Constitution thus becomes *anti nomi*. It calls for a plea upon a continuity of Members found in the instrument and for meeting the domain needs and aspirations of the present. A constitutional court like this Court is a nice balance of jurisdiction and it declares the law as contained in the Constitution but in doing so it rightly reflects that the Constitution is a living and organic thing which of all instruments has the greatest claim to be construed broadly and liberally. (*Goodyear India Ltd. v. State of Haryana* ((1990) 2 SCC 71 : 1990 SCC (Tax) 223 : AIR 1990 SC 781) and *Synthetics and Chemicals Ltd. v. State of U.P.* ((1990) 1 SCC 109 : AIR 1990 SC 1927)). "



In view of the above cited decisions, the learned Senior Counsel is of the opinion that the case of the writ petitioner - College is to be allowed.

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26. The learned counsel appearing for the respondents 4 and 5 disputed the contentions raised on behalf of the writ petitioner - College by stating that the action of the writ petitioner - College is arbitrary and the allegations made against the respondents 4 and 5 as well as the major penalty imposed against them are disproportionate. By applying the theory of proportionality, the learned counsel appearing for the respondents 4 and 5 emphasized that the orders passed by the Regional Joint Director of Collegiate Education refusing to grant approval as well as the confirmation order issued by the Appellate Authority rejecting the claim of the Management to terminate the services of the respondents 4 and 5 are certainly proper and in consonance with the provisions of the Act. When the competent authority at the first instance refused to grant approval for the penalty of termination, which was confirmed by the Director of Collegiate Education, the Management has unnecessarily filed the civil revision petition knowing the fact that the Tribunal is not functioning. Thus, the Management has adopted a delay tactics in adjudicating the decision taken against the respondents 4 and 5 and consequently, they are unable to get their retirement and terminal benefits, though they were retired from service on attaining the age of superannuation.

27. The learned counsel appearing for the respondents 4 and 5 further contended that in view of the fact that the respondents 4 and 5 were allowed to retire from service, they are entitled to get their terminal and retirement benefits. However, the Management is holding the retirement and terminal benefits under the *lis pendens*. Thus, the case of the writ petitioner - College deserves to be dismissed.

28. In respect of the provisions of the Act, the learned counsel appearing for the respondents 4 and 5 emphasized that though the Act provides constitution of the Tribunal, as of now, the Government has not issued any notification making the Tribunal function. In the absence of functioning of the Tribunal, the Management cannot prolong and protract the issues. Thus, the Management must be directed to settle the retirement and terminal benefits to the respondents 4 and 5.

29. The learned counsel appearing for the respondents 4 and 5 mainly contended that Section 19 of the Act contemplates a prior approval of the competent authority for the purpose of imposing

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suspension of teachers or other persons employed in private colleges. Section 20 of the Act is an exclusive provision available to the teachers and other persons employed in private colleges to prefer appeal against the order of punishment imposed by the Management of the College, which is approved by the competent authority under Section 19 of the Act. Thus, the appeal provided under Section 20 of the Act is not made available to the educational agency. The benefit of appeal under Section 20 of the Act is provided considering the disadvantageous position of the teachers and other persons employed in private colleges. Thus, the Management of the College cannot prefer any appeal under Section 20 of the Act.

30. However, the Management of the College is at liberty to prefer an appeal under Section 37 of the Act. Section 37 contemplates that any person aggrieved by any order, decision or direction of the competent authority under any provision of the Act may prefer an appeal against such order, decision or direction, to such authority or officer as may be prescribed. Thus, Section 37 of the Act is to be read with reference to Rule 23 of the Tamil Nadu Private Colleges (Regulation) Rules, 1976 (hereinafter, referred to as "the Rules"). Rule 23 of the Rules provides appellate authorities under Section 37 of the Act. Accordingly, the Director of Collegiate Education is the competent authority to entertain an appeal under Section 37 of the Act.

31. The learned counsel appearing for the respondents 4 and 5 then solicited the attention of this Court with reference to the second appeal provided under Section 21 of the Act. The learned counsel for the respondents 4 and 5 is of the opinion that the second appeal under Section 21 of the Act is not made available to the Management. As far as the Management is concerned, the appeal lies before the Director of Collegiate Education, under Section 37 of the Act alone and thereafter, the order passed by the Director of Collegiate Education became final and the Management has no option, but to implement the orders. The learned counsel for the respondents 4 and 5 is of the opinion that the second appeal provided under Section 21 of the Act is inapplicable in respect of the Management of the Colleges. In order to substantiate the above contentions, the learned counsel for the respondents 4 and 5 referred the Judgment of the Honourable Supreme Court in the case of **State of West Bengal and another vs. Nripendra Nath Bagehi**, reported in **AIR 1966 SC 447**, wherein it has been held as follows:

"(13) We do not accept this construction.

The word "control" is not defined in the Constitution at all. In Part XIV which deals

<https://hcservices.ecourts.gov.in/hcservices> under the Union and the States



the words "disciplinary control" or "disciplinary jurisdiction" have not at all been used. It is not to be thought that disciplinary jurisdiction of services is not contemplated. In the context the word "control" must, in our judgment, include disciplinary jurisdiction. Indeed, the word may be said to be used as a term of art because the Civil Services (Classification, Control and Appeal) Rules used the word "control" and the only rules which can legitimately come under the word "control" are the Disciplinary Rules."

32. In the case of **State of Punjab vs. Khemi Ram**, reported in **AIR 1970 SC 214**, it has been held as follows:

"16. The question then is whether communicating the order means its actual receipt by the concerned Government servant. The order of suspension in question was published in the Gazette though that was after the date when the respondent was to retire. But the point is whether it was communicated to him before that date. The ordinary meaning of the word 'communicate' is to impart, confer or transmit information. (cf. Shorter Oxford English Dictionary, Vol.1, p.352). As already stated, telegrams dated July 31, and August 2, 1958, were despatched to the respondent at the address given by him where communications by Government should be despatched. Both the telegrams transmitted or imparted information to the respondent that he was suspended from service with effect from August 2, 1958. It may be that he actually received them in or about the middle of August 1958 after the date of his retirement. But how can it be said that the information about his having been suspended was not imparted or transmitted to him on July 31, and August 2, 1958, i.e., before August 4, 1958 when he would have retired? It will be seen that in all the decisions cited before us it was the communication of the impugned order which was held to be essential and not its actual receipt by the officer concerned and such communication was held to be necessary because till the order is issued and actually communicated to the person concerned the authority



making such order would be in a position to change its mind and modify if it thought fit. But once such an order is sent out, it goes out of the control of such an authority and therefore, there would be no chance whatsoever of its changing its mind or modifying it. In our view, once an order is issued and it is sent out to the concerned Government servant, it must be held to have been communicated to him, no matter when he actually received it. We find it difficult to persuade ourselves to accept the view that it is only from the date of the actual receipt by him that the order becomes effective. If that be the true meaning of communication, it would be possible for a Government servant to effectively thwart an order by avoiding receipt of it by one method or the other till after the date of his retirement even though such an order is passed and despatched to him before such date. An officer against whom action is sought to be taken, thus, may go away from the address given by him for service of such orders or may deliberately give a wrong address and thus prevent or delay its receipt and be able to defeat its service on him. Such a meaning of the word 'communication' ought not to be given unless the provision in question expressly so provides. Actually knowledge by him of an order where it is one of dismissal, may, perhaps, become necessary because of the consequences which the decision in AIR 1966 SC 1313 (supra) contemplates. But such consequences would not occur in the case of an officer who has proceeded on leave and against whom an order of suspension is passed because in his case there is no question of his doing any act or passing any order and such act or order being challenged as invalid."

33. Relying on the above judgment, the learned counsel for the respondents 4 and 5 emphasized that no order was communicated to the respondents 4 and 5 with reference to the order now produced before this Court. Therefore, the respondents 4 and 5 are to be treated as retired employees for all purposes and accordingly, terminal and pensionary benefits are to be settled to them.



34. By relying on the decision in the case of **Canara Bank vs. D.R.P. Sundharam**, reported in (2016) 12 SCC 724, the learned counsel for the respondents 4 and 5 states that in the said case, charge sheet was issued after superannuation and therefore, the impugned judgment quashing disciplinary proceedings calls for no interference by the Honourable Supreme Court.

35. In the case of **State of West Bengal and others vs. Pronab Chakraborty**, reported in (2015) 2 SCC 496, it has been held that High Court erred in interpreting Rule 10(1) to conclude that proceedings after superannuation could continue only when charges against delinquent entailed pecuniary loss to Government and since charges levelled against respondent did not depict any pecuniary loss to Government, proceedings could not continue after his superannuation.

36. In the case of **Dev Prakash Tewari vs. Uttar Pradesh Cooperative Institutional Service Board, Lucknow and others**, reported in (2014) 7 SCC 260, it has been held as follows:

"8.Once the appellant had retired from service on 31-3-2009, there was no authority vested with the respondents for continuing the disciplinary proceeding even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such an authority it must be held that the enquiry had lapsed and the appellant was entitled to get full retiral benefits."

37. This Court, by order dated 03.09.2014, in W.P.(MD) No.6228 of 2014 (**S.Murugan vs. The Managing Director**), has held as follows:

"14...This Court considered the service regulations framed by the Tamil Nadu State Transport Corporation (Order dated 16 March, 2007 in W.P.Nos.46532 and 46533 of 2002) and clearly held that there is no specific power to the Corporation to initiate disciplinary proceedings after the retirement of its employees. This Court held that in case the employee has committed a loss or damage, it is open to the Corporation to institute civil proceedings for recovery of the amount, irrespective of the fact as to whether the person is in service or out of service. In



short, this Court has given a categorical finding that the Tamil Nadu State Transport Corporation has no right to initiate disciplinary proceedings after the retirement of concerned employees.

15. The Supreme Court in *Dev Prakash Tewari vs. U.P. Coop. Institutional Service Board* [2014 (8) Scale 216] had an occasion to consider the question as to whether it is open to the disciplinary authority to initiate disciplinary proceedings or continue it after retirement without any provision for the same under the relevant Service Regulations. The Supreme Court, by following an earlier judgment in *Bhagirathi Jena vs. Board of Directors, O.S.F.C. and others* [1999 (3) SCC 666], held that in case there was no authority vested with the Department for continuing the disciplinary proceedings even for the purpose of imposing any reduction in the retiral benefits payable to the employee, such proceedings would be vitiated on the ground of lack of jurisdiction."

38. Relying on the above Judgments, the learned counsel for the respondents 4 and 5 formed an opinion that the respondents 4 and 5 were retired from service and no order retaining their services were issued nor disciplinary proceedings were pending and therefore, for all purposes, they are to be treated as retired employees and consequently, they are entitled to get terminal and retirement benefits.

39. This Court is of the considered opinion that those Judgments referred by the learned counsel for the respondents 4 and 5 may not be applicable with reference to the facts and circumstances of the *lis* on hand. The respondents 4 and 5 were already terminated from service. All along the litigations were pending questioning the validity of the termination orders passed. The first round of litigation ended in favour of the respondents 4 and 5 and the orders of termination were set aside by this Court on the technical ground that prior approval under Section 19 of the Act was not obtained. Thereafter, the proposal for approval was submitted by the College Management and the said approval was rejected by way of a non-speaking order. The appellate authority, who issued the orders under Section 37 of the Act also confirmed the order passed by the competent authority, through a non-speaking order. Even the learned counsel for the respondents 4



and 5 fairly admitted the fact that the orders passed by the competent authority as well as the appellate authority, under Sections 19 and 37 of the Act are non-speaking orders and no reasons are assigned. Absolutely, a blanket order of rejection was passed. Further, there is no clue to ascertain whether the authorities have considered the grounds raised by the respective parties or not. Such a blanket non-speaking orders can never be construed as valid and all such orders are to be scraped in limine. Thus, this Court has no hesitation in holding that such non-speaking orders are invalid in the eye of law and the constitutional Courts have time and again held that the authorities competent as well as the appellate authority, on adjudication of the issues under the statute, must assign reasons for arriving at a conclusion. This being the established principles of law, the non-speaking orders passed by the competent authority as well as the Appellate Authority under the Act are undoubtedly not tenable.

40. By way of reply, the learned Senior Counsel appearing for the writ petitioner - College states that the respondents 4 and 5 were already terminated from service. The issues regarding the validity of the termination issued by the writ petitioner - College is sub-judiced. Thus, unless the issues are decided with reference to the provisions of the Act as well as the grounds raised by the writ petitioner - College, the respondents 4 and 5 cannot claim any benefits.

DISCUSSIONS:

41. This Court is of the considered opinion that undoubtedly, the orders of termination issued against the respondents 4 and 5 are sub-judiced. Though the respondents 4 and 5 were relieved from service on attaining the age of superannuation, the penalty imposed on them is sub-judiced by this Court and unless a final decision is taken in this regard, the consequential reliefs cannot be granted.

42. May that it be, this Court is of the considered opinion that with reference to the grounds raised by the writ petitioner - College, it is relevant to look into the provisions of the Act. The purport of the Act is to provide protection to the teaching and non-teaching staff appointed by the Management in the Aided Minority Colleges. The very object of the Act is to ensure that the arbitrary actions by the Management of the private colleges are prevented or dealt with in accordance with law. Various provisions are provided for the payment of grant, recovery of excess amount, constitution of College Committee as well as the maintenance of the private colleges should function. At this



junction, it is relevant to refer Section 19 of the Act, which states that subject to any rule that may be made in this behalf, no teacher or other person employed in any private college shall be dismissed, removed or reduced in rank nor shall his appointment be otherwise terminated except with the prior approval of the competent authority.

43. Such a prior approval from the competent authority is mandatory under Section 19 of the Act. In this case, initially, the prior approval was not obtained by the writ petitioner - Management. Thus, the order of termination was set aside by this Court on the technical ground, which was confirmed by the Honourable Division Bench of this Court. Thereafter, an opportunity was given to the writ petitioner - College to reconsider the issue. Accordingly, the Management confirmed the earlier orders of termination by way of a separate resolution and submitted a proposal to the Regional Joint Director of Collegiate Education for grant of approval, under the provisions of the Act. The proposal submitted by the writ petitioner - College was rejected by the Regional Joint Director of Collegiate Education. Thus, the writ petitioner - Management preferred a second appeal under Section 21 of the Act, before the Director of Collegiate Education and the said appeal was also rejected. Thereafter, the writ petitioner - College approached the Tribunal under Section 38 of the Act and filed a civil miscellaneous appeal before the learned Principal District Judge, Thanjavur and the said civil miscellaneous appeal was returned on the ground that the writ petitioner - Management should produce the notification issued by the Government, if any available. Challenging the said return of appeal papers, the writ petitioner - Management filed C.R.P.(NPD) (MD) No.181 of 2014, before this Court.

44. It is relevant to point out that two provisions are made in the Act. One is for the benefit of the teaching and non-teaching staff employed in the private colleges and the another provision is for the benefit of the Management, if they are aggrieved. It is a common law principle that an opportunity is to be equally provided to all the aggrieved persons in the eye of law. Any statute must provide a mechanism for the redressal of the grievances of all the affected parties. If any provision is made only for the benefit of one person, leaving behind the other person, then such provision is to be declared as unconstitutional. The opportunity to be provided must be equal to all the parties concerned. However, certain exceptional circumstances may arise for providing opportunity to one party alone and no such circumstance arises in the present case on hand.



45. In the present case, the aggrieved person may either be a teacher or an employee of the private college or the Management. If the teacher or the other person employed in the private colleges are imposed with any punishment under Section 19 of the Act, they are at liberty to approach the Appellate Authority under Section 20 of the Act. Section 20 of the Act provides appeal against the order of punishment imposed on the teacher or other person employed in private colleges. Thus, Section 20 of the Act is an exclusive provision of appeal provided for the benefit of teacher or the other person employed in private colleges. It is made clear that the College Management cannot prefer any appeal under Section 20 of the Act, since Section 20 of the Act provides a mechanism exclusively for the benefit of teachers or other persons employed in private colleges. However, Section 21 of the Act provides second appeal in case of dismissal, removal or reduction in rank or termination of appointment of teachers or other persons employed in private colleges. Section 21 of the Act categorically enumerates as follows:

"21. Second appeal in case of dismissal, removal or reduction in rank or termination of appointment of teachers or other persons employed in private colleges.- If the appeal under section 20 was against the dismissal, removal or reduction in rank or the termination otherwise of the appointment of any teacher or other person employed in any private college, such teacher or other person or the educational agency aggrieved by any order made in any such appeal, may prefer an appeal against the appellate order to the Tribunal."

46. The very spirit of Section 21 of the Act portrays that the teacher or the other person or the educational agency aggrieved by any order made in any such appeal, may prefer an appeal against the appellate order to the Tribunal. Thus, if any order is passed by the Appellate Authority under Section 20 of the Act, then, the second appeal to the Tribunal can be preferred either by the teacher or the other person or the educational agency. Thus, the equality clause to be maintained under the constitutional principles is undoubtedly maintained in the provisions of the Act. The equality clause enunciated is given effect by including the educational agencies for the purpose of preferring second appeal, under Section 21 of the Act, to the Tribunal.

47. Thus, Section 21 of the Act is unambiguous that the teacher or the other person or the educational agency aggrieved by



any order made in any such appeal may prefer an appeal against the appellate order to the Tribunal. Thus, the Tribunal is common both for the teacher or the other person or the educational agency. The first appeal provided under Section 20 of the Act is exclusively for the benefit of the teacher or the other person employed in private colleges. Once the Appellate Authority has taken a decision in respect of the appeal preferred by the teachers or the other persons employed in the private colleges, then, under Section 21 of the Act, the teacher or the other person or the educational agency is empowered to prefer further appeal to the Tribunal constituted under Section 38 of the Act.

48. This apart, Section 37 of the Act provides appeal against the order of the competent authority. Section 37 of the Act is the general provision regarding appeal and revision. Section 37 of the Act states that any person aggrieved by any order, decision or direction of the competent authority under any provision of the Act, may prefer an appeal against such order, decision or direction to such authority or officer as may be prescribed and different authorities or officers may be prescribed for different classes of private colleges.

49. Now, let us understand the scheme of the statute. The scheme of the Act is unambiguous that if the penalty of dismissal, removal and reduction in rank is passed against the teacher or the other person employed in private colleges, then appropriate prior approval is required under Section 19 of the Act. If any such prior approval is granted by the competent authority under Section 19 of the Act, then the aggrieved teacher or the person employed in private colleges can file an appeal under Section 20 of the Act. If a decision is taken against such a teacher or the person employed in private colleges, then they can also prefer appeal under Section 21 of the Act. This is the line of opportunity provided to the teachers or the other persons employed in private colleges.

50. As far as the College Management is concerned, they are empowered to submit a proposal to the authority competent for the purpose of obtaining a prior approval under Section 19 of the Act. If the approval is rejected, then the Management of the College may prefer an appeal against such orders under Section 37 of the Act. If the said appeal is rejected by the Appellate Authority under Section 37 of the Act, then the educational agency is also entitled to prefer second appeal to the Tribunal under Section 21 of the Act. A triangular procedure is prescribed under the Act so as to redress the grievances of the teacher or the other person employed in private colleges as well as to the College



Management / educational agency. Thus, an effective redressal mechanism is provided under the statute both for the teacher or the person employed in private colleges as well as to the Management. The above line of remedies provided under the statute is undoubtedly efficacious in nature. However, the constitutional Courts should ensure that all such efficacious statutory remedies are made available to the aggrieved persons for the purpose of exhausting the same.

51. The scope of judicial review, under Article 226 of the Constitution of India, is undoubtedly limited. The scope of judicial review is limited only for the purpose of examining the procedures followed for arriving at the decision. The High Court cannot question the decision itself, unless such a decision is absolutely perverse or unconstitutional or causing great injustice to any of the litigants. Thus, the power of judicial review under Article 226 of the Constitution of India cannot be extended for the purpose of adjudicating the disputed facts and issues. Those adjudications are to be done before the competent authority, Appellate Authority or the Special Tribunal constituted for that purpose. In such circumstances, if an opportunity of adjudication is not provided in an efficacious manner, the very purpose and object of the Act would be defeated. The very purpose and object of the Act and the line of redressal mechanism provided under the Act are to be implemented for the benefit of the litigants as well as the aggrieved persons.

52. Pragmatic approach and constructive interpretation of statutes under these circumstances are imminent. A constructive interpretation alone will save the opportunity to be provided for the aggrieved persons for the purpose of redressal of their grievances. Thus, a constructive interpretation is to be adopted in the matter of interpreting the provisions of the Act, so as to cull out the reasons and objects sought to be achieved by the statute itself.

53. In the present scenario, it is to be visualized that the Management is initiating disciplinary proceedings against the teachers or the other persons employed in private colleges in the event of any misconduct. Once the charge is framed, enquiry is conducted by complying with the principles of natural justice and a decision is taken by the College Committee in the manner prescribed under the law, then a proposal is to be submitted by the College Management to the competent authority for grant of approval. Once the approval is granted, then no further approach is required as far as the College Management is concerned. However, the teachers or the other persons employed in private



colleges, are entitled to prefer an appeal to the Appellate Authority under Section 20 of the Act. If no remedy is provided to the teachers or the other persons employed in private colleges by the Appellate Authority, then those teachers or the other persons employed in the private colleges can approach the Tribunal under Section 21 of the Act, which is constituted under Section 38 of the Act.

54. Similarly, if the proposal submitted by the College Management, under Section 19 of the Act, is rejected by the competent authority, then the Management has got a right to prefer appeal under Section 37 of the the Act and if that appeal is rejected by the Appellate Authority, then the educational agency is also entitled to prefer appeal to the Tribunal under Section 21 of the Act. Thus, the benefit of Tribunal constituted under Section 38 of the Act is made available both for the employees as well as to the Management. Thus, the mechanism provided under the scheme of the statute is very much within the ambit of the constitutional principles. Equal opportunity for efficacious adjudication and redressal of grievances are provided under the statute. Thus, this Court do not find any infirmity or otherwise in respect of the scheme of the Act and therefore, the scheme of the Act as contemplated by the legislatures is to be implemented by the Government for the benefit of the aggrieved persons / litigants and for the redressal of their grievances.

55. In the event of not providing such efficacious remedy to the aggrieved persons, then the whole scheme of the Act gets defeated. It is the common law principle that once an Act is enacted and notified, then the scheme of the Act is to be implemented in entirety. Piecemeal implementation of the statute undoubtedly would defeat the very purpose and object of the Act itself. For example, if some of the provisions of the Act are not given effect to by the Government, then the implications would be drastic and the persons may not get an opportunity to redress their grievances in an effective manner. Thus, the remedies provided under the statute must be made available to all the aggrieved persons for the purpose of adjudicating the issues and to get redressal of their grievances.

56. In the present case, unfortunately, the Tribunal, under Section 38 of the Act, has not been notified by the Government of Tamil Nadu for many years. It is an unfortunate situation where the Legislature has enacted the law and the law is implemented in piecemeal and the remedies provided under Section 38 of the Act, through the Tribunal, are not given effect for the reasons not known to this Court.



57. The learned Additional Government Pleader appearing on behalf of the Department made a submission that the issuance of notification is under active consideration of the Government of Tamil Nadu. The High Court has forwarded a draft notification for appointing the Principal Judge, City Civil Court, Chennai and the Principal Judge / Principal District Judge / District Judges of each District in the State of Tamil Nadu.

58. Yet another provision is available under Section 41 of the Act for revision. The revision provided under Section 41 of the Act is an optional one. Section 41 of the Act stipulates that the Government may call for and examine the record of any authority or officer prescribed for the purpose of Section 37 in respect of any proceedings to satisfy themselves as to the regularity of the proceeding or the correctness, legality or propriety of any order made, decision taken or direction issued therein; and, if, in any case, it appears to the Government that any such order, decision or direction should be modified, annulled, reversed or remitted for reconsideration, they may pass orders accordingly.

59. The revision provided under Section 41 of the Act is an optional one, in view of the fact that the Government intended to retain its power for the purpose of ascertaining the validity of the orders passed by the competent authority as well as the Appellate Authority. However, Section 41 of the Act will not preclude the aggrieved person from approaching the Tribunal under Section 21 of the Act, which is the direct scheme of redressal of the grievances provided under the scheme of the Act. Thus, the revision provided under Section 41 of the Act is optional one and the Government may, on its own motion, call for the records and examine the same in order to ascertain the validity or correctness of all such records or orders issued by the authorities under the Act. Thus, the revision is to be considered as isolation to the regular scheme of redressal mechanism provided under the Act.

60. This being the interpretation of the statute to be adopted for the purpose of an efficacious alternative remedy provided, this Court is of the considered opinion that the writ petitioner - College Management should be provided with an opportunity to adjudicate the issues before the Tribunal, which is to be notified under Section 38 of the Act by the Government of Tamil Nadu.

61. As stated earlier, the disputed facts and the original records with reference to the issues



cannot be adjudicated in a writ jurisdiction under Article 226 of the Constitution of India. In the present case on hand, the Regional Joint Director of Collegiate Education, through a non-speaking order, rejected the proposal submitted by the writ petitioner - College Management. Equally, the first Appellate Authority, namely, the Director of Collegiate Education also passed an order, which is absolutely non-speaking and silent about the reasons for arriving at such a conclusion. A plain reading of these two orders indicates that the authority competent as well as the Appellate Authority had not applied their mind in respect of the issues and the grounds raised by the writ petitioner - College Management for establishing their decision to impose the major penalty on the respondents 4 and 5. Thus, the only course of action is to remand the matter for re-adjudication. Remanding the case would do no service to the cause of justice. May be a way out for the speedy disposal of the cases. However, an effective adjudication of the issues before approaching the High Court under Article 226 of the Constitution of India is the constitutional perspective. Under these circumstances, this Court is of the considered opinion that the Tribunal alone would provide a way for adjudication of all such disputed issues and facts. This apart, the scheme of remedies provided under the statute cannot be denied to the aggrieved persons under the provisions of the statute. The Act being a special enactment must be implemented in its entirety in order to uphold the constitutional principles as well as the scheme of the appellate remedy provided under the Act itself. The framers of the special enactment thought fit to provide the benefit of Tribunal as an effective alternative remedy. When an effective alternative remedy is provided under the Act, the Government failed in its duty by not notifying the Tribunal under Section 38 of the Act. This Court is of the considered opinion that no additional financial expenditures are involved in view of the fact that the respective District Judges of the District are to be notified as the Presiding Officers of the Special Tribunal to try the appeals to be filed under the provisions of the Act. This being the nature of the adjudication, the financial implications may not be a valid ground for the purpose of denying the benefit of the Tribunal in respect of the aggrieved persons under the provisions of the Act. This being the facts and circumstances, this Court has no hesitation in coming to the conclusion that the case of the writ petitioner - College deserves merit consideration.

62. The learned Additional Government Pleader appearing for the Department submitted a copy of the Letter No.25595/D2/2005-37, Dated 05.08.2019, sent by the Deputy Secretary to Government to the Additional Government Pleader, Madurai Bench of Madras High



Court, Madurai-23, which reads as under:

"The Private Colleges Appellate Tribunal constituted under Section 38 of The Tamil Nadu Private Colleges (Regulation) Act, 1976 vide G.O.Ms.No.672, Higher Education Department, dated 25.4.1979 was wound up with effect from 31.1.2002. The High Court of Madras had resolved that the Principal District Judge of the District can act as Appellate Tribunal under Section 38 of the said Act. Further, the High Court of Madras had given instructions to the Principal Judge, City Civil Court, Chennai to transfer the 3 cases, which were pending before the Tribunal at the time of its winding up, to the file of the Principal District Judges concerned with direction to proceed with the cases on receipt of Government notification appointing them as Appellate Tribunal under Section 38 of the said Act. As such Legislation is necessary to provide for designation of all District Courts in the State as Tribunals, within the respective jurisdiction and also for transfer of cases pending before the existing Tribunal, to the proposed Tribunals concerned.

2. Section 38 of the Act reads as under:

"38. Tribunal-(1) The Government may, by notification, constitute as many Tribunals may be necessary for the purposes of this Act.

(2) Each Tribunals shall consist of one person only who shall be a judicial officer not below the rank of a District Judge.

(3) Each Tribunal shall have such jurisdiction and over such area or in relation to such class of Private colleges, as the Government may, by notification, from time to time, determine."

3. The tribunal already constituted under section 38 of the said Act has already been wound up. It is proposed to constitute the Principal District Judges of the Districts as the Tribunal under section 38 of the said President's Act 19 of 1976, in supersession of the earlier Notification issued in G.O.Ms.No.672, Higher Education, dated 25.4.1979.



4. Accordingly, a draft notification has been received from the Registrar General, High Court of Madras for constituting the Principal Judge, City Civil Court, Chennai and the Principal Judges of the Districts in the State of Tamil Nadu as the Tribunal for the purpose of Section 38 of the Tamil Nadu Private Colleges (Regulation) Act, 1976, in supersession of the earlier notification issued in G.O.Ms.No.672, Education Department, dated 25.04.1979 which will be later published in the Tamil Nadu Government Gazette, which will take 12 to 13 weeks time. On notifying the same, the Principal Judge / Principal District Judge / District Judge will act as Tribunals. The above draft notification is also under active consideration of the Government in consultation with it's advisory departments. As the Legislation has to be promulgated in this regard, it is requested to apprise the same before the Hon'ble Court and obtain sufficient time accordingly."

63. When the Government itself had taken a decision to issue a notification for the revival of the Tribunal under Section 38 of the Act, this Court is of the considered opinion that all these issues raised in the present case are to be adjudicated by the parties concerned before the Tribunal. The disputed facts and issues, as held earlier, cannot be adjudicated in a writ proceedings. Such disputed facts are to be adjudicated with reference to the original records as well as the evidences, if any and such exercise is to be done by the Tribunal to be constituted under Section 38 of the Act.

64. When the Government itself has taken a decision to issue a notification for the revival of the Tribunal, under Section 38 of the Act, which would be certainly beneficial to all the aggrieved persons in respect of the orders passed by the competent authority or the appellate authority, this Court is of the opinion that such an opportunity is to be provided to all the aggrieved persons, who all are entitled to prefer an appeal before the Tribunal. When the statute contemplates Tribunal for effective adjudication of the issues by the aggrieved persons and the Government also decided to issue a notification for the revival of the Tribunal, which was wound up, then this Court is of the opinion that the decision of the Government is, undoubtedly,



in the interest of larger public and the same must be allowed to be completed as stated in the abovesaid letter.

65. Accordingly, this Court is inclined to pass the following orders:

- (i) As far as W.P.(MD) No.6076 of 2014, the first respondent / Secretary to Government, Higher Education Department, is directed to issue appropriate notification implementing Section 38 of the Act, by constituting Tribunals for deciding the statutory appeals to be filed under Section 21 of the Act.
- (ii) The notification, in this regard, is directed to be issued by the first respondent / Secretary to Government, Higher Education Department, within a period of twelve weeks from the date of receipt of a copy of this order and communicate the same to all concerned.
- (iii) After issuing the notification, the writ petitioner - College Management is at liberty to re-present the returned appeal papers to the jurisdictional Tribunal, within a period of four weeks from the date of issuance of the notification by the Government of Tamil Nadu.
- (iv) On receipt of any such appeal from the writ petitioner - College Management, the Tribunal so-constituted shall adjudicate the issues and decide the same on merits and in accordance with law, as expeditiously as possible.
- (v) W.P.(MD) No.6076 of 2014 filed by the College Management stands allowed.
- (vi) As far as C.R.P.(NPD) (MD) No.181 of 2014, the order dated 07.01.2014, passed by the learned Principal District Judge, Thanjavur, returning the appeal papers in CMA CR No.19/404/14 submitted by the petitioner - College is set aside and C.R.P.(NPD) (MD) No.181 of 2014 stands allowed.
- (vii) As far as W.P.(MD) No.11641 of 2014, in view of the allowing of W.P.(MD) No.6076 of 2014 and C.R.P.(NPD) (MD) No.181 of 2014, the College Management as well as the respondents 4 and 5 therein are at liberty to adjudicate the validity of the orders passed by the competent authority as well as the Appellate



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W.P.(MD) Nos.11785 & 11786 of 2012,
11641 & 6076 of 2014,
C.R.P.(NPD) (MD) No.181 of 2014

Authority under the provisions of the Act, as this Court has directed for issuance of the notification and for the functioning of the Tribunal. Thus, all such disputed issues and the facts shall be adjudicated by the respective parties before the Tribunal, which is now directed to be notified by the Government of Tamil Nadu. Accordingly, W.P. (MD) No.11641 of 2014 stands disposed of.

(viii) As far as W.P.(MD) Nos.11785 & 11786 of 2012, this Court is of the considered opinion that the writ petitioners therein are at liberty to adjudicate all these issues before the Tribunal to be notified in view of the directions issued by this Court in W.P.(MD) No.6076 of 2014 as above. Accordingly, W.P. (MD) Nos.11785 & 11786 of 2012 stand disposed of.

(ix) All the parties are at liberty to adjudicate their respective grievances for redressal before the Tribunal now directed to be notified under Section 38 of the Act.

(x) No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

To:

1. The Principal District Judge, Thanjavur.

2. The Regional Joint Director of
Collegiate Education,
Racecourse Road,
Jamal Mohammed College Road,
Tiruchirapalli.

3. The Secretary to Government,
Higher Education Department,
State of Tamil Nadu,
Secretariat, Chennai-9.

<https://hcservices.ecourts.gov.in/hcservices/>



W.P.(MD) Nos.11785 & 11786 of 2012,
11641 & 6076 of 2014,
C.R.P.(NPD) (MD) No.181 of 2014

5. The Director of Collegiate Education,
E.V.K.Sampath Maligai,
College Road, Chennai-600 006.

+4 CC to M/s.S.K.MANI, Advocate (SR-80436[F] dated 07/08/2019)

+2 CC to M/s.D.SELVANAYAGAM, Advocate (SR-80344[F] dated
07/08/2019)

W.P. (MD) Nos.11785 & 11786 of 2012
and
M.P. (MD) Nos.1 of 2012 & 1 of 2014 (in
both W.Ps.)
and
C.R.P. (NPD) (MD) No.181 of 2014
and
M.P. (MD) No.1 of 2014
and
W.P. (MD) No.11641 of 2014
and
M.P. (MD) No.2 of 2014
and
W.P. (MD) No.6076 of 2014
and
M.P. (MD) No.1 of 2014
07.08.2019

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