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IN THE HIGH COURT OF JUDICATURE AT MADRAS

|               |            |
|---------------|------------|
| Reserved On   | 10/01/2022 |
| Pronounced On | 14/03/2022 |

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.Nos.6159, 6161, 6162, 6163 & 6165 of 2020  
and  
W.M.P.Nos.7222, 7224, 7226, 7228 & 7234 of 2020  
and  
9010, 9011, 9012, 9013 & 9014 of 2020

(Through Video Conferencing)

|                  |                                      |
|------------------|--------------------------------------|
| S.P.Singaravel   | ...Petitioner in<br>W.P.No.6159/2020 |
| M.Senthil Kumar  | ...Petitioner in<br>W.P.No.6161/2020 |
| L.Dominic Xavier | ...Petitioner in<br>W.P.No.6162/2020 |
| D.Moganadasse    | ...Petitioner in<br>W.P.No.6163/2020 |
| K.Veerappan      | ...Petitioner in<br>W.P.No.6165/2020 |

Vs

|                                                                                                                                                             |                                |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------|
| 1.Pimrose School rep. by the<br>Administrative Principal/Principal,<br>No.63, Gundusalai, Oulgaret,<br>Puducherry.                                          |                                |
| 2.The Director of School Education,<br>Government of Puducherry, Puducherry.                                                                                |                                |
| 3.The Secretary,<br>Council for the Indian School<br>Certificate Examinations,<br>Pragati House, First Floor,<br>47-48 Nehru Place,<br>New Delhi - 110 019. | ...Respondents in<br>all W.Ps. |



Prayer in all WP's: Writ Petitions filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records of the second respondent with No.NIL dated 29.02.2020 terminating the services of the petitioner and quash the same.

|                            |   |                                                 |
|----------------------------|---|-------------------------------------------------|
| For Petitioner in all W.Ps | : | Mr.V.Ajayakumar                                 |
| For R1 in all W.Ps         | : | Mr.C.Vigneswaran                                |
| For R2 in all W.Ps         | : | Mr.R.Syed Mustafa<br>Government Pleader (Pondy) |

#### C O M M O N    O R D E R

By this common order, all the five (5) Writ Petitions are being disposed.

2. In these Writ Petitions, the petitioners have challenged the respective impugned orders all dated 29.02.2020 of the first respondent school terminating the services of the petitioners.

3. This is the third round of litigation before this Court for the petitioner in W.P.No.6163 of 2020 and second round for other petitioners. Earlier, all these petitioners have filed W.P.No.9252 of 2019.

4. The said Writ Petitions were filed to direct the first respondent to implement the pay scale as prescribed by the Government of Puducherry. In the said Writ Petitions, the petitioners prayed for an interim injunction to restrain the respondent school from terminating their services. It is stated that at the time of admission of the said Writ Petition, the Government of Puducherry stated that the petitioners were not facing any threat of termination. Thus, the services of these petitioners were not sought to be terminated earlier. The said Writ Petitions are said to be pending as on date.

5. It is stated that the first respondent school thereafter unilaterally framed a Rule titled "Human Resources Policy and Procedure Manual for Academic Year 2018-2019" by assuming unbridled power to terminate the services of teachers without notice and without following the procedural safeguards provided under the provisions of the Pondicherry School Education Act, 1987 and Rules and Regulation framed by the Government of Puducherry.

6. The said Rule was challenged by D. Moganadassee (the



petitioner in W.P No.6163 of 2020) in W.P.No.17366 of 2019. The said Writ Petition is also pending on the date of filing of these Writ Petitions. It was stated that the first respondent has filed a counter stating that the Rules and Regulation are being followed given by the department.

7. Pending the said Writ Petitions, the first respondent has issued the impugned communications all dated 29.02.2020 to the respective petitioners terminating their services from the first respondent school.

8. Earlier, an interim order came to be passed by this Court on 11.03.2020 in W.M.P.Nos.7234, 7222, 7224, 7226 and 7228 of 2020 in these respective Writ Petitions. By the said interim order, the operation of the impugned communications was stayed. The first respondent therefore filed W.M.P.Nos.9010, 9011, 9012, 9013 & 9014 of 2020 to vacate the interim stay.

9. The first respondent thereafter filed Writ Appeal Nos.1059, 1063, 1064, 1065 and 1069 of 2020 before the Division Bench of this Court against the order dated 11.03.2020 of the learned Single Judge in W.M.P.Nos.7234, 7222, 7224, 7226 and 7228 of 2020 in these respective Writ Petitions.

10. These appeals were disposed by the First Bench of this Court vide common order dated 02.02.2021. The operative portion of the said order reads as under:-

"1. These five appeals arise out of similar interim orders passed by the Single Bench, in effect restraining orders of termination of service passed by the appellant-school.

2. There is no dispute that the appellant is an unaided private school operating in Puducherry. It also appears to be the undisputed position that the letters of appointment given by the appellant to the writ petitioners while confirming their appointments or inducting them into service clearly made out that the employees had to give notice of three months before leaving, but the employer was entitled to terminate the services without notice, if the performance of the employee was found to be unsatisfactory. The appellant maintains that if such was the condition of appointment in each case, it was for the employer to terminate the services of the employees and no restriction could be placed on the employer in implementing its decision.



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3. The respondent-writ petitioners refer to the Pondicherry School Education, Rules, 1996, framed in exercise of the powers conferred under Section 49 of the Pondicherry School Education Act, 1987. Rule 51 of the said Rules of 1996 has been made applicable to employees of recognized private schools, whether aided or not. The Writ Petitioners contend that in the light of such rules, unaided private schools cannot take the law into their own hands and have to adhere to the procedure spelt out by the rules before terminating the services of any employee.

4. This is not such an open and shut case where merely because a private unaided school has appointed an employee on contractual basis or at its will, it must be said that the employer would be entitled to terminate the services at any point of time without reference to anything else. There is a set of rules staring the appellant in the face and, in the circumstances, the impugned orders appear to be founded on the rules applied by the Union Territory of Puducherry to unaided but recognized schools.

5. For the reason aforesaid, the interim orders impugned in the appeals do not call for any interference at this Stage. It is made clear that the present order is passed without prejudice to the rights and contentions of the parties and no inference can be drawn therefrom that the impugned order is justified or otherwise.

6. It will be open to the parties to request the relevant Bench to take up the matters as expeditiously as the business of such Bench would permit. The matters would be decided by the relevant Bench completely uninfluenced by the observations herein.

7. W.A.Nos.1059, 1064, 1063, 2065, 1069 of 2020 are disposed of without any order as to costs. As a consequence, C.M.P.Nos.12961, 12987, 13005, 12980, 12986 of 2020 are disposed of.

11. Pursuant to the aforesaid order, these Writ Petitions are being taken up for final hearing and are being disposed. Appearing on behalf of the petitioners, the learned counsel are



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relied on the following decisions:-

- i. Binny Ltd. and another Vs. Sadasivan and Others, CDJ 2005 SC 586;
- ii. Dr. Janet Jeyapaul Vs. SRM University and Others, C.A.No.14553/2015;
- iii. R.Raja and another Vs. The Registrar of Co-operative Society, Thattanchavady, Puducherry and Other, W.P.No.35131 of 2019;
- iv. K.Marappan Vs. Deputy Registrar of Co-operative Society, 2006 (4) CTC 689;
- v. Mahendrarvarman Vs. Government of Tamil Nadu, 2009 (5) CTC 237;
- vi. State of U.P. Vs. Sandeep Kumar Balmiki, 2009 (17) SCC 514;
- vii. Tekraj Vasandi Alias K.L.Basandhi Vs. Union of India, (1988) 1 SCC 236.
- viii. Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others, (1993) 1 SCC 645.
- ix. Raj Kumar Vs. Director of Education and others, (2016) 6 SCC 541.
- x. Ramesh Ahluwalia Vs. State of Punjab and others, (2012) 12 SCC 331.
- xi. Marwari Balika Vidyalaya Vs. Asha Srivastava and others, (2020) 14 SCC 449.
- xii. The Calcutta Gas Company Vs. The State of West Bengal and others, AIR 1962 SC 1044 : 1962 Supp (3) SCR 1.
- xiii. Bineeta Patnaik Padhi Vs. Union of India and others, 2021 SCC OnLine Cal 1662.
- xiv. Jayanti Mondal Vs. State of West Bengal and others, 2017 SCC OnLine Cal 362.
- xv. Roychan Abraham Vs. State of U.P and others, 2019 SCC OnLine All 3935.
- xvi. Satvinder Singh Vs. Presentation Convent Senior Secondary School and others, order of the Delhi Court in W.P.(C) No.971 of 2020, dated 04.08.2020.

12. It is submitted that merely because the first respondent school is a private school, ipso facto does not mean that it can resort to the policy of hire and fire. It is submitted the first respondent school is governed by the laws in force in the Union Territory of Pondicherry. It is submitted that the first respondent is a State within the meaning of Article 12 of the Constitution of India and therefore cannot terminate the services of the respective petitioners. It is providing essential services and therefore there cannot be any unilateral and arbitrary termination of services.



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13. It is the case of the first respondent that the first respondent is a Private School run by the society registered under the provisions of the Pondicherry Registration Societies Act on 17.10.1970.

14. It is further submitted that first respondent (Primrose School, Oulgaret, Puducherry) was inaugurated in June 1999 in Puducherry. It is submitted that it is a pioneering effort in India to utilize Dr.Glenn Doman's teaching methods as the basis for a full program of pre-school, primary and secondary education and was started by the "Mother's Service Society" and is the affiliated to Council for the Indian School Certificate Examination (CISCE), New Delhi. It is submitted that the first respondent is a private unaided school and therefore these Writ Petitions against the first respondent are not maintainable.

15. The learned counsel for the respondents has also referred to the following decisions:-

- i. Trigun Chand Thakur Vs. State of Bihar, 2019(7) SCC 513;
- ii. Committee of Management, Delhi Public School and another Vs. M.K.Gandhi and Others, (2015) 17 SCC 353;
- iii. State of Haryana Vs. Suman Datta, 2000 (10) SCC 311;
- iv. M.Theophilus Rajendra Kumar Vs. The Director of Matriculation Schools, College Road, Chennai-6 and Others, 2005 (3) CTC 385;
- v. Y.Doss Vs. Padma Seshadri Bala Bhavan Senior Secondary School, 17, Thirumalai Pillai Road, T.Nagar, Chennai-600 017, W.P.No.21898 of 2004.
- vi. K.Muniswari Vs. The Regional Director, Central Board of Secondary Education, Plot No.1630 A, 'J' Block, 16<sup>th</sup> Main Road, Anna Nagar West, Chennai 10 and two Others, W.P.No.16114 of 2013".

16. I have heard the learned counsel for the petitioner and the first respondent and the learned Government Pleader (Pondy.). I have perused the impugned communication and the provisions of the Law as in force in the Union Territory of Puducherry and the case laws submitted on behalf of the petitioner and the respondents.

17. I have also perused the provisions of the Pondicherry School Education Act, 1987. It regulates the Private Schools. Section 17 in Chapter V of the said Act provides that the Government may provide rules for regulating the number,



qualifications and conditions of service including promotion of pay, allowances, leave, pension, provident fund, insurance and age of retirement rights (as respect disciplinary matters) of the teacher and other persons employed in any recognised school.

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18. The qualification of the respective petitioners, the date of their appointment and name of the post are given below:-

| S1<br>·<br>No. | W.P.<br>Nos. | Name of the<br>Petitioners | Date of<br>Appointment | Name of Post                              | Qualification.                        |
|----------------|--------------|----------------------------|------------------------|-------------------------------------------|---------------------------------------|
| 1.             | 6159/20      | S.P.Singara<br>vel         | 23.07.2004             | French<br>Teacher                         | M.Sc.,<br>B.Ed., M.Ed.,<br>and M.Phil |
| 2.             | 6161/20      | M.Senthil<br>Kumar         | 29.04.2013             | Post Graduate<br>Teacher<br>(Mathematics) | M.Sc., B.Ed<br>and M.Phil.,           |
| 3.             | 6162/20      | L.Dominic<br>Xavier        | 17.11.2011             | Post Graduate<br>Teacher<br>(Chemistry)   | M.Sc., B.Ed                           |
| 4.             | 6163/20      | D.Moganadas<br>se          | 23.02.2011             | Post Graduate<br>Teacher                  | M.A., B.Ed.,<br>and M.Phil.,          |
| 5.             | 6165/20      | K.Veerappan                | 09.02.2009             | Trained<br>Graduate<br>Teacher            | B.F.A., TTC.,<br>B.L.I.S and<br>M.A   |

19. Short point that arises for consideration in these writ petitions is whether the Writ Petitions are maintainable against the first respondent school merely because the first respondent school is a school which has been granted permission under the provisions of the Pondicherry School Education Rules, 1996 and is affiliated to the third respondent Council for the Indian School Certificate Examination (CISCE) and whether the first respondent was justified in issuing the impugned orders terminating the services of the petitioners.

20. The first respondent is a private school run by the "Mother's Service Society" registered under the Societies Registration (Pondicherry Amendment) Act, 1969. The first respondent School was started by a registered "Mother's Service Society" (registered on 17.10.1970). The said school was later affiliated in the year 1999 with the Council for the Indian School Certificate Examination (CISCE) and is imparting education of C.I.S.C.E Course.

21. Ordinarily, a writ proceeding against a private body is not maintainable. However, a well known exception has been recognised by the Courts where such private bodies perform an essential public function.



22. In Binny Limited and Another Vs. V.Sadasivan and others, (2005) 6 SCC 657 : 2005 SCC (L&S) J 881 2005 SCC OnLine SC 1152, the Hon'ble Supreme Court recognised a Writ remedy against a private party. The Court held that if a term of a contract is violated, ordinarily, the remedy is not a writ petition under Article 226 of the Constitution of India. The Court further held that when that contractual power is being used for public purpose, it is certainly amenable to judicial review. The power must be used for lawful purposes and not unreasonably and under our Constitution. Article 226 of the Constitution of India is couched in such a way that a writ of mandamus could be issued even against a private authority. However, such private authority must be discharging a public function and the decision sought to be corrected or enforced must be in discharge of a public function.

23. The Court in the above case referred to few passages from De Smith, Woolf and Jowell Judicial Review of Administrative Action, 5th Edn. which was quoted in VST Industries Limited Vs. VST Industries Workers' Union and Another, (2001) 1 SCC 298. Relevant passages are reproduced below:-

19. In VST Industries Ltd. v. Workers' Union [(2001) 1 SCC 298 : 2001 SCC (L&S) 227] the very same question came up for consideration. The appellant Company was engaged in the manufacture and sale of cigarettes. A petition was filed by the first respondent under Article 226 of the Constitution seeking a writ of mandamus to treat the members of the respondent Union, who were employees working in the canteen of the appellant's factory, as employees of the appellant and for grant of monetary and other consequential benefits. Speaking for the Bench, Rajendra Babu, J., (as he then was), held as follows: (SCC p. 305, para 7)

"7. In de Smith, Woolf and Jowell's Judicial Review of Administrative Action, 5th Edn., it is noticed that not all the activities of the private bodies are subject to private law e.g. the activities by private bodies may be governed by the standards of public law when its decisions are subject to duties conferred by statute or when, by virtue of the function it is performing or possibly its dominant position in the market, it is under an implied duty to act in the public interest. By way of illustration, it is noticed that a



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private company selected to run a prison although motivated by commercial profit should be regarded, at least in relation to some of its activities, as subject to public law because of the nature of the function it is performing. This is because the prisoners, for whose custody and care it is responsible, are in the prison in consequence of an order of the court, and the purpose and nature of their detention is a matter of public concern and interest. After detailed discussion, the learned authors have summarised the position with the following propositions:

(1) The test of whether a body is performing a public function, and is hence amenable to judicial review, may not depend upon the source of its power or whether the body is ostensibly a 'public' or a 'private' body.

(2) The principles of judicial review prima facie govern the activities of bodies performing public functions.

(3) However, not all decisions taken by bodies in the course of their public functions are the subject-matter of judicial review. In the following two situations judicial review will not normally be appropriate even though the body may be performing a public function:

(a) Where some other branch of the law more appropriately governs the dispute between the parties. In such a case, that branch of the law and its remedies should and normally will be applied; and

(b) where there is a contract between the litigants. In such a case the express or implied terms of the agreement should normally govern the matter. This reflects the normal approach of English law, namely, that the terms of a contract will normally govern the transaction, or other relationship between the parties, rather than the general law. Thus, where a special method of resolving disputes (such as arbitration or resolution by



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private or domestic tribunals) has been agreed upon by the parties (expressly or by necessary implication), that regime, and not judicial review, will normally govern the dispute."

24. In paragraph No.20, the Court held that applying the above principles, this Court held that the High Court rightly held that it had no jurisdiction. However, in paragraph No.32, it was held as under:-

32. Applying these principles, it can very well be said that a writ of mandamus can be issued against a private body which is not "State" within the meaning of Article 12 of the Constitution and such body is amenable to the jurisdiction under Article 226 of the Constitution and the High Court under Article 226 of the Constitution can exercise judicial review of the action challenged by a party. But there must be a public law element and it cannot be exercised to enforce purely private contracts entered into between the parties.

25. In Dr. Janet Jean-Paul Vs. SRM University, (2015) 16 SCC 530, the Hon'ble Supreme Court reversed the judgment of Division Bench which held that a writ petition was not maintainable before a Writ Court by directing the appellant to approach the Tribunal.

26. The Hon'ble Supreme Court declined to examine the merits of the case and remanded the case back to the Division Bench to decide respondent's appeal on merits afresh.

27. In the above case, the Court also observed that in the normal course, the contention that the appellant University was not a State would have been accepted. However, since a Single Judge of High Courts had not only entertained Writ Petition but had also allowed that Petition on merits, the decision of the Division Bench of High Court on appeal holding that a Writ Petition was not maintainable (on ground that R-1 was neither a "State" nor an "Authority" under Article 12 of the Constitution of India) was reversed. The case dealt with a case of professor employed in the deemed University.

28. In Ramesh Ahluwalia Vs State of Punjab, (2012) 12 SCC 331: 2012 SCC OnLine SC 721, the Hon'ble Supreme Court reiterated that issuance of a writ is not confined to statutory authorities or instrumentalities of State and held that the remedy under the writ jurisdiction cannot be denied if a person



or authority concerned was performing a public duty though not necessarily imposed by statute. There the challenge was to the dismissal/ retrenchment from service of an Administrative officer of DAV Public School which is a private School.

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29. In *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and others Vs. V.R.Rudani and others*, (1989) 2 SCC 691, it was held that there can be no doubt that even a purely private body is amenable to the jurisdiction of the High Court under Article 226 of the Constitution for issuance of a writ of mandamus and even where the State has no control over its internal affairs, if the private body performs a public function which is ordinarily and normally expected to be performed by the State Authorities.

30. In *Sushmita Basu Vs. Ballygunge Siksha Samity*, (2006) 7 SCC 680 : 2006 SCC (L&S) 1741, the appellant was working in a recognised private Educational Institution in the State of West Bengal. The schools were not receiving grants in aid from the Government, but, were getting dearness allowance component of the approved teachers working in the school.

31. The issue was with respect to the applicability of recommendation of the First Pay Commission and that of Second Pay Commission. Though there was no statutory provision or even government order directing private unaided educational institutions to implement the recommendations of the Third Pay Commission, they were implemented by the schools as part of their agreement with the teachers.

32. Though the Management also implemented the recommendations of the Third Pay Commission in the sense that the salaries of the teachers were hiked in terms of the said report, the institution refused to give retrospective effect to the enhancement w.e.f. 1-1-1998. The Court held that a Writ of Mandamus can be issued by the Court against the private institutions if a public law element was involved.

33. In *Marwari Balika Vidyalaya Vs. Asha Srivastava*, (2020) 14 SCC 449 : 2019 SCC OnLine SC 408, the Hon'ble Supreme Court held that dismissal from services of an employee who had served for five years was stigmatic and such dismissal order passed without holding an enquiry was clearly arbitrary, illegal and void and held that the petitioner was entitled to back wages.

34. There, the petitioner had earlier directly filed a Writ Petition for a Mandamus to appoint the petitioner. An order passed in the said Writ Petition and was communicated to the school which resulted in a show-cause notice being issued by the Secretary of the Managing Committee to the petitioner asking as



to why the petitioner moved the said writ application impleading the District Inspector of Schools (Primary Education) Calcutta as a party in the proceeding, which as per their understanding caused breach of discipline of the school. Along with this letter, an order of suspension was also issued to the petitioner. The petitioner was suspended for a period of 12 days w.e.f. 21-12-2000 to 01-01-2001.

35. Later, the service of the petitioner was also terminated. The order of termination from services was thereafter directly challenged before the High Court. The Writ Petition was dismissed as not maintainable. The Division Bench of the High Court allowed the Writ Petition.

36. The Hon'ble Supreme Court in para 15 held that writ application was clearly maintainable in view of discussion and more so in view of the decision of the Court in Ramesh Ahluwalia case referred to supra, wherein, the Court has considered the issue at length and observed as follows:-

"13. In the aforesaid case [Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani, (1989) 2 SCC 691] , this Court was also considering a situation where the services of a Lecturer had been terminated who was working in the college run by the Andi Mukti Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust. In those circumstances, this Court has clearly observed as under : (V.R. Rudani case [Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani, (1989) 2 SCC 691] , SCC pp. 700-701, paras 20 & 22)

'20. The term "authority" used in Article 226, in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words "any person or authority" used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The



22. Here again, we may point out that mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute. Commenting on the development of this law, Professor de Smith states: "To be enforceable by mandamus a public duty does not necessarily have to be one imposed by statute. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract". [Ed. : S.A. de Smith, Judicial Review of Administrative Action (4th Edn., Stevens & Sons Ltd., London 1980) at p. 540.] We share this view. The judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into watertight compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available "to reach injustice wherever it is found". Technicalities should not come in the way of granting that relief under Article 226. We, therefore, reject the contention urged for the appellant on the maintainability of the writ petition.'

The aforesaid observations have been repeated and reiterated in numerous judgments of this Court including the judgments in Unni Krishnan [Unni Krishnan, J.P. v. State of A.P., (1993) 1 SCC 645 : 1 SCEC 523] and Zee Telefilms Ltd. [Zee Telefilms Ltd. v. Union of India, (2005) 4 SCC 649] brought to our notice by the learned counsel for the appellant Mr Parikh.

14. In view of the law laid down in the aforementioned judgment of this Court, the judgment of the learned Single Judge [Ramesh Ahluwalia v. State of Punjab, 2009 SCC OnLine P&H 11755] as also the Division Bench [Ramesh Ahluwalia v. State of Punjab, 2010 SCC OnLine P&H 13111] of the High Court cannot be sustained on the proposition that the writ petition would not maintainable merely because the respondent institution is a purely unaided



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private educational institution. The appellant had specifically taken the plea that the respondents perform public functions i.e. providing education to children in their institutions throughout India."

37. In the light of the above discussion, there is no dispute that this Writ Petition is maintainable under Article 226 of the Constitution of India even against a private body if such a private body is discharging a public function.

38. The first respondent school though a private body is indeed performing a public function. It is the primordial duty of the State to provide education and regulate the same in the State. The State has however been unable to perform its duty due to budgetary constraints. Private entrepreneurs have come forward to fill up the vacuum and void left by the State to perform this essential public function. Therefore, the first respondent school is amenable to the jurisdiction of this Court under Article 226 of the Constitution of India.

39. The first respondent school is governed by the provisions of Pondicherry School Education Act, 1987 and the Rules made therein. The first respondent school's existence is dependent on it complying with the provisions of the Act and the Rules made therein.

40. The first respondent school is affiliated to Council for the Indian School Certificate Examinations (CISCE). At present, the first respondent school is stated to have nearly 400 students. Even though a school is affiliated to Council for the Indian School Certificate Examinations (CISCE), it functions under the control of Directorate of School Education, Puducherry and is thus bound to follow the Rules and Regulations given by the said Department.

41. It has to follow the Rules and Regulation, bye-laws directives and guidelines of the State/Central Government in matters concerning the administration and running of the schools, failing to which, the affiliation of the school can be withdrawn.

42. Rule 5 in Part I - Conditions for Provision Affiliation of Schools to Chapter I of Council for the Indian School Certificate Examinations Rules for affiliation reads as under:-

#### 5. Teaching Staff

(a) The teaching staff must be qualified and trained. The Council has laid down the minimum



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qualifications for the teaching staff (in Chapter II). In the case of certain subjects, the Council will take into consideration such qualifications as are necessary.

(b) The Governing Body / Managing Committee of the school shall issue a written appointment letter to every employee of the school. Unless otherwise stipulated by the State Government, the terms of service in the appointment letter shall incorporate the following aspects:

(i). the terms and conditions of service of the employee including the designation, scale of pay and other allowances, to which he/she shall be entitled;

(ii). the schools in India must appoint, and pay salaries and other admissible allowances to the staff at par with the corresponding categories of employees in the State Government schools or as per conditions prescribed by the Government of India or as per the conditions laid down by the State Government in the NOC;

(iii) the schools outside India should pay salaries not lower than that of the teachers in government schools in that country;

(iv) the different categories of leave of absence, age of retirement, provident fund, pension, gratuity, medical and other benefits to which the employee shall be entitled;

(v) the penalties which could be imposed on the employee for the violation of any Code of Conduct or the Service Rules or the breach of any of the terms of the contract entered into by him/her;

(v) the manner in which an employee can be suspended and disciplinary proceedings, in relation to an employee, shall be pursued before he/ she can be dismissed, removed from service or reduced in rank;

(vi) arbitration of any dispute arising out of any breach of service conditions between the employee and the Governing Body /



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Managing Committee, with regard to terms and conditions of appointment, scales of pay and other allowances, leave of absence, age of retirement, pension, gratuity, provident fund, medical and other benefits, any disciplinary action leading to the suspension, dismissal or removal from service or reduction in rank of the employee or any other matter must be specified in such contract.

(c) A specimen copy of the Service Agreement, Code of Conduct and Service Rules referred to in (b) above with any subsequent amendments shall be forwarded to the Chief Executive and Secretary of the Council by the Governing Body / Managing Committee of the School.

43. As per the Rule VII in Chapter I of Council for the Indian School Certificate Examinations Rules for affiliation, the affiliation of the school will be withdrawn if they fail to comply with the rules and regulations fixed by the Department.

44. The Council also imposes a duty on the Committee of the school to follow Rules and Regulations of the State Government in the case of running the school which includes appointment and termination of service of the employees.

45. Though Council for the Indian School Certificate Examinations Rules for affiliation contemplates the alternate remedy in case of dispute before the Courts at Delhi, it can be invoked as a defence only where procedure before termination from services was in compliance of the Rules and Regulation in force.

46. The exercise on the strength of the self styled Human Resources Policy and Procedure Manual for Academic Year 2018-2019 of the first respondent cannot be said to be in accordance with the provisions of the Act. The facts on record seem to indicate that when the petitioner's were appointed, the basic pay which was prescribed by the Government was Rs.9,300-34,800 with Grade pay of Rs.4,800/-.

47. The petitioners were however reportedly being paid lesser pay than the salary prescribed by the Government. It appears that teachers/staffs appointed after them were paid higher salary prescribed by the Government and thus there was discrimination between petitioners and other teaching staffs appointed after them.



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48. As per section 19 of the Pondicherry Education Act, 1987, every teacher and every other person employed in any recognised school shall be governed by such Code of Conduct as may be prescribed and if any teacher or other person so employed violates any provision of such Code of Conduct, he shall be liable to such disciplinary action as may be prescribed.

49. The Manager may define the Standards of Conduct to be observed by teachers and other persons employed in the recognised school, such standards not being inconsistent with the provisions of this Act and rules made thereunder.

50. Under Section 20 of the Pondicherry Education Act, 1987, no teacher or other person employed in any recognised school shall be placed under suspension, except when an enquiry into the gross misconduct, within the meaning of the Code of Conduct prescribed under Sub Section (1) of Section 19, of such feature other person is contemplated.

51. It further stipulates that no person shall remain suspension for a period of more than two months from the date of suspension and if such enquiry is not completed within that period, such teacher or other person shall, without prejudice to the enquiry, be deemed to have been restored as teacher or other employee.

52. The appropriate authority may, for reasons to be recorded in writing, extend the said period of two months, for a further period not exceeding two months, if, in the opinion of such appropriate authority, the enquiry could not be completed within the period of two months for reasons directly attributable to teacher or such other person.

53. There are no direct provisions for dismissal of a teacher under the provisions of the Act. However, under Section 21 of the Pondicherry Education Act, 1987, it is stated that any teacher or other person employed in any recognised school, who are dismissed, removed or reduced in rank or whose appointment is otherwise terminated, or whose pay or relevance or any of its conditions of service the altered or interpreted to his disadvantage, may prefer an appeal against such order to such authority or officer not below the rank of Director of Education, Pondicherry, as may be prescribed and different such authorities are officers as may be prescribed for different classes of private schools.

54. Section 22 of the Pondicherry Education Act, 1987 deals with further appeal to an Appellate Tribunal. However such remedy can be exercised only if termination is in accordance with the Rule.



55. As per section 25 of the Pondicherry Education Act, 1987, notwithstanding anything contained in any other law for the time being in force, or award, agreement or contract of service whether such a award, agreement or contract of service was made before or after the commencement of the Act, decree or order of Court, the Tribunal or Authority or the rules relating to recognition of payment of grant, to recognised school, had or have no statutory force. Thus, termination of services of the petitioner under self styled Human Resources Policy and Procedure Manual for Academic Year 2018-2019 is not accordance with the Act and the Rules.

56. Proviso to Section 25 of the Act further stipulates that where under any such award, agreement, contract of service or otherwise, any teacher or other person employed in any recognised school is entitled to benefits in respect of any matters which are more favourable to him than those to which he will be entitled under this chapter, such teacher or other person shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that he receives benefits in respect of other matters under Chapter V.

57. Thus, the Act provides complete safeguard in the matter of employment of a teacher and a person employed in a recognised private school in Union Territory of Pondicherry. The question of hire and fire is not permitted. Private school functioning in the Union Territory of Pondicherry are strictly bound by the provisions of the Act.

58. Further, as per Rule 43 of the Pondicherry School Education Rules, 1996, all the teachers will be placed on probation for a period of one year and after one year, they will be deemed to be regular and permanent employees. Thus, the petitioners were permanent employees of the first respondent school. Therefore, termination of their services is to be strictly in accordance of the Act and the Rules. As per Rule 43 of the Pondicherry School Education Rules, 1996 reads as under:-

#### 43. Recruitment

1. A teacher shall be appointed in accordance with recruitment rules framed by the management as approved by the Director.
2. The order of appointment of the teacher shall specifically state the designation, date of appointment nature of appointment i.e., ad hoc, temporary or regular, scale of pay and other benefits applicable to the cadre in



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which the teacher is entitled to, as determined by the management of school.

3. The teacher appointed on regular basis shall be placed on probation for a period of two years, which may be extended for a further period of one year in case the performance of the teacher is not satisfactory:

Provided that if the performance of the teacher even after extension of probation is not found to be satisfactory, the services of the teacher shall stand terminated.

4. No ad hoc or temporary appointment shall be made for more than one academic year.
5. No person who does not possess a certificate in teachers training or a Bachelor Degree in Education or its equivalent shall be appointed as a teacher in a recognized school.
6. No person other than those stipulated in sub rule (5) above shall be permitted to take classes.

59. At the time of granting permission to open the first respondent Primrose School, the Government of Puducherry had clearly stated that the permission granted / affiliation will be withdrawn if the school fails to follow the said Rules and Regulation issued by the Department. As per Rule 43 of the Pondicherry School Education Rules, 1996, a teacher shall be appointed in accordance with Recruitment Rules framed by the Management as approved by the Director.

60. Further, under Rule 51 of the Pondicherry School Education Rules, 1996, a method has been prescribed for imposing penalties. Removal from service is one of the major penalty prescribed under the Rules. Rule 54 of Pondicherry School Education Rules, 1996 prescribed the procedure for imposing major penalty.

61. Rule 54 of Pondicherry School Education Rules, 1996 specifically provides the procedure for imposing major penalty and the first respondent is bound to follow the same. Rule 54 of the Pondicherry School Education Rules, 1996 reads as under:-

#### 54. Procedure For Imposing Major Penalties

1. No order imposing on an employee any major penalty shall be made except after an inquiry, held as far as may be, in the manner specified below:-



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- a) the disciplinary authority shall frame definite charges on the basis of the allegation on which the inquiry is proposed to be held and a copy of the charges together with the statement of the allegations on which they are based shall be furnished to the employee and he shall be required to submit within such time as may be specified by the disciplinary authority, but not later than two weeks, a written statement of his defence and also to state whether he desires to be heard in person, the delinquent employee may be given an opportunity for appointing a defence assistant who is an employee of a private school;
- b) on receipt of the written statement of defence, or where no such statement is received within the specified time, the disciplinary authority may itself make inquiry into such of the charges as are not admitted or if it considers necessary so to do, appoint an inquiry officer for the purpose;
- c) at the conclusion of the inquiry, the Inquiry Officer shall prepare a report of the enquiry regarding his findings on each of the charges together with the reasons therefore;
- d) the disciplinary authority shall consider the record of the inquiry and record its findings on each charge and if the disciplinary authority is of opinion that any of the major penalties should be imposed, it shall-
  - i. furnish to the employee a copy of the report of the Inquiry Officer, where an enquiry has been made by such officer;
  - ii. give him notice in writing stating the action proposed to be taken in regard to him and calling upon him to submit within the specified time, not exceeding two weeks, such representation as he may wish to make against the proposed action;
  - iii. on receipt of the representation, if any, made by the employee, the disciplinary authority shall determine the penalty, if



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any, that should be imposed on the employee: and  
iv. after considering the representation made by the employee against the penalty proposed, the disciplinary authority shall recommend the penalty to be imposed on the employee and send its findings to the managing committee and the managing committee shall either accept or reject or modify the penalty as recommended by the disciplinary authority for reasons recorded in writing and pass orders accordingly.

2. Any employee aggrieved by the decision of the managing committee of the school referred to in sub-rule 1(d) may prefer an appeal to the Director within 30 days of the communication of the order to the delinquent employee.
3. Any employee of a recognized private school who is aggrieved by an order of the Director in respect of such disciplinary proceedings may prefer an appeal to the Tribunal within 30 days of the communication of the order of the Director.

62. The petitioners are entitled to protection under Article 311 of the Constitution of India. While terminating the services of the petitioners, the first respondent has failed to follow the Rules and Regulation under the Pondicherry School Education Act 1987 and the Pondicherry School Education Rules, 1996.

63. The first respondent has suomotto made rules titled Human Resources Policy and Procedure Manual for Academic Year 2018-2019. It is further subject matter of W.P.No.17366 of 2019. Though no stay has been obtained, yet in its counter in W.P.No.17366 of 2019, the first respondent school has categorically stated that service of the petitioners therein will be in accordance with the law as per the employment agreement and by following the principles of natural justice in case of termination by enquiry.

64. In this case, the termination from service was as per the Human Resources Policy and Procedure Manual for Academic Year 2018-2019. The challenged to the Human Resources Policy and Procedure Manual for Academic Year 2018-2019 is yet to be decided in W.P.No.17366 of 2019. Prima facie, the said Rule is contrary and ultravires the provisions of the Pondicherry School Education Act, 1987 and the Rules made there under.



65. The decision of the first respondent that the services of the petitioners were terminated under the aforesaid Human Resources Policy and Procedure Manual for Academic Year 2018-2019 as the petitioners failed to improve their performance even after providing innumerable opportunities and personal advice directing to improve performance and update, cannot be countenanced. Such removal under such ground is not contemplated under the statutory Rules.

66. The petitioners have been teaching the students from the date of their appointment. The ground with advancement in teaching methodology and to improve the quality of education the committee has decided to dispense my service after rendering many years of service as a permanent and regular teaching staff of the school cannot be countenanced. Any alternation in the terms of employment after the petitioners became permanent staffs of the school cannot be imposed. Termination from services can be based on statutory Rule and Regulation in force.

67. Enquiry has to be conducted on the charges or allegation on the employees with the statement of allegation and a full-fledged hearing is conducted in case of imposing major penalty and termination of service. Hence the impugned orders terminating the services of the petitioners are liable to be quashed.

68. Termination of services was a drastic move and has a Civil consequences and stigmatises the petitioners. Though these petitioners have put more than 15 years of service, their services are being terminated.

69. The Rules prescribes a method for imposition of Minor and Major penalty. Unless, the petitioners have attracted any of the circumstances specified therein, the termination of their services cannot be justified.

70. Even if the petitioners were allegedly ill-equipped to teach the students on account of advancement in the teaching method, the matters of employment concept of golden handshake is recognised. Normally, severance package is given or an option for voluntary retirement scheme is given.

71. However, after extracting the services for over 15 years, the first respondent School has attempted to terminate the services of the petitioners. It is arbitrary and illegal and is contrary to the Rule 54 of the Pondicherry School Education Rules, 1996.



72. The Human Resources Policy and Procedure Manual for Academic Year 2018-2019 is a self serving document of the first respondent School. Prima facie, it is not binding on the petitioner.

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73. In any event, the correctness of the said Human Resources Policy and Procedure Manual for Academic Year 2018-2019 is now subject matter of W.P.No.17366 of 2019. Therefore, alacrity shown by the first respondent in terminating the services without having the issue settled there, cannot be condoned. The speed tracking for removal from service contrary to the Pondicherry School Education Rules, 1996 is nothing but an abuse.

74. In the light of the above discussion, the impugned orders all dated 29.02.2020 terminating the service of the respective petitioners are quashed with liberty to the first respondent to taken appropriate action for terminating the services of petitioner from service subject to the final outcome of the decision of this Court in W.P.No.17366 of 2019.

75. Writ Petitions stand allowed with the above observations. No cost. Consequently, connected Miscellaneous Petitions are closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. Administrative Principal/Principal,  
Pimrose School,  
No.63, Gundusalai, Oulgaret,  
Puducherry.

2.The Director of School Education,  
Government of Puducherry,  
Puducherry.



3. The Secretary,  
Council for the Indian School Certificate Examinations,  
Pragati House, First Floor,  
47-48 Nehru Place, New Delhi - 110 019.

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+10cc to Mr.V.Ajayakumar, Advocate, S.R.No.17157, 17156, 17155,  
17154, 17598 & 17153

W.P.Nos.6159,6161,6162,6163 & 6165 of 2020  
and  
W.M.P.Nos.7222,7224,7226,7228 & 7234 of 2020  
and  
9010,9011,9012,9013 & 9014 of 2020

JP (CO)  
RN (04/04/2022)