



W.P.No.13619 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

Reserved on	21.10.2024
Pronounced on	21.01.2025

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.13619 of 2024 and
W.M.P.No.14771 of 2024

Amalorpavam Higher Secondary School,
Rep. by its Principal,
Lourdes Campus, Vanarapet,
Puducherry - 605 001.

... Petitioner

Vs.

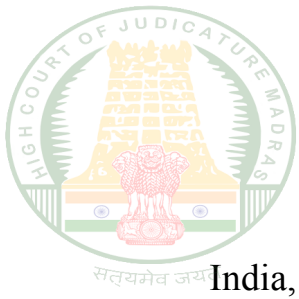
1.The Union Territory of Puducherry,
Rep. by the Under Secretary to Govt. (Labour),
Labour Department,
Govt. of Puducherry, Puducherry.

2.The Labour Officer (Conciliation),
Office of the Labour Officer (Conciliation),
15, First Floor, Nehru Nagar,
Puducherry 605 011.

3.A.John Bosco

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of



W.P.No.13619 of 2024

India, to issue a Writ of Certiorari, to call for the records relating to the Notification bearing G.O.Rt.No.47/LAB/AIL/S/2024 dated 22.04.2024, on the file of the 1st respondent and quash the same.

For Petitioner : Mr.T.P.Manoharan, Senior Counsel for
Mr.T.M.Naveen
For Respondents : Mr.M.Nirmal Kumar,
Govt. Advocate (Pondy) for R1 & R2
Mr.Balan Haridas, for R3

ORDER

The petitioner has filed this Writ Petition seeking issuance of a Writ of Certiorari, to call for the records relating to the Notification bearing G.O.Rt.No.47/LAB/AIL/S/2024 dated 22.04.2024, on the file of the 1st respondent and quash the same.

2. Heard Mr.T.P.Manoharan, learned Senior Counsel for the petitioner, Mr.M.Nirmal Kumar, learned Government Advocate (Pondy) for R1 & R2 and Mr.Balan Haridas, learned counsel for R3 and perused the materials available on record.

3. The petitioner has challenged the notification of the first



W.P.No.13619 of 2024

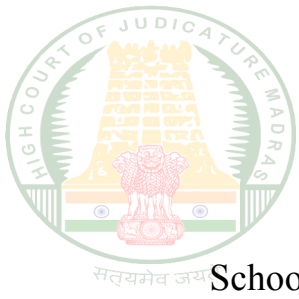
WEB COPY

respondent dated 22.04.2024 through which a reference has been made by the first respondent Government in respect of the dispute raised by the third respondent who was a driver in the petitioner School.

4. The brief facts of the case are as follows:

The petitioner is an Unaided Private Minority School recognised under the National Commission for Minority Educational Institutions. The third respondent was appointed as a temporary driver in the petitioner school on 21.07.2001 and his services have been regularised with effect from 01.07.2006. As lot of complaints have been received from the parents of the students against the third respondent that he was temperamental, rude, rough, discourteous and inconsiderate to children, he was asked to handle the load carrier vehicle for transporting stationary and other materials required for the School.

4.1. From 01.06.2015, the third respondent deliberately disobeyed the instructions of the School and refused to drive the Tata Ace Van assigned to him and claimed that he should be allowed to take only



W.P.No.13619 of 2024

WEB COPY

School Bus. On 10.06.2015, he had given a letter to the petitioner school by making unnecessary allegations and marked copies of the said letter to the various authorities including the second respondent. The Pondicherry School Education Act and Rules are applicable to both the petitioner and the third respondent and hence, the petitioner School had initiated disciplinary action against the third respondent for the misconduct committed by him under the said Act and Rules.

4.2. The Industrial Dispute Act is not applicable to the petitioner School and the third respondent. Based on the copy of the letter marked to the second respondent / Labour Officer (Conciliation), he assumed power and authority and had issued notice dated 10.02.2016 to the petitioner School calling upon the School to participate in the conciliation proceedings. The petitioner School had challenged the same by way of filing a Writ Petition in W.P.No.9524 of 2016. By an order dated 17.07.2023, this Court has directed the second respondent to consider the reply of the petitioner School dated 13.08.2015 and pass appropriate orders on merits. However, the second respondent once again



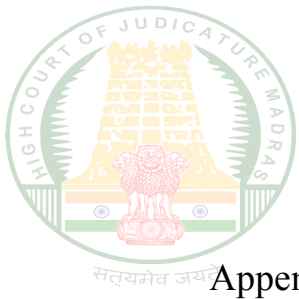
W.P.No.13619 of 2024

WEB COPY

issued a notice on 12.10.2023 to the petitioner School and the petitioner had given a detailed reply on 18.11.2023 and the letter dated 21.11.2023. But, the second respondent has proceeded with the conciliation proceedings. So, a contempt petition was filed by the petitioner in Cont.P.No.3059 of 2023.

4.3. In the meanwhile, the second respondent proceeded with the conciliation and filed a failure report on 13.03.2024 to the first respondent. The petitioner has sent a letter to the first respondent also narrating all the facts. But without considering the same, the first respondent has given a summary notification by referring a non-existed industrial dispute to the Labour Court, Puducherry. Hence, the petitioner has filed this Writ Petition challenging the above notification.

5. Mr.T.P.Manoharan, learned Senior Counsel for the petitioner submitted that as per Section 19(1) of the Pondicherry School Education Act, 1987, all the teachers and other persons employed in any recognised school shall be governed by the Code of Conduct prescribed under



W.P.No.13619 of 2024

WEB COPY

Appendix - II of the Pondicherry School Education Rules, 1996. As per the Code of Conduct found in Appendix - II of the Rules, "*all the drivers of the School shall be at the disposal of the School, co-operate with the School and serve in all its activities at the assigned places, carry out the works assigned to them faithfully and diligently and maintain discipline at all times. The third respondent ought to have been co-operative in carrying out the works assigned to him by maintaining discipline*". But the third respondent disobeyed the instructions of the School and refused to drive the Tate Ace Van, by demanding to engage him to drive Ashok Leyland Mini Bus and created unnecessary problems and he remained absent from duty unauthorisedly. So it is claimed by the petitioner that as per Section 19(1) of the Pondicherry School Education Act and Rule 48 of the Pondicherry School Education Rules, the third respondent is liable for disciplinary action for the misconducts committed by him.

5.1. In accordance with the procedure prescribed under Rule 54 of the Pondicherry School Education Rules, 1996, the disciplinary authority had initiated disciplinary action and issued charge sheet on 29.07.2015



W.P.No.13619 of 2024

WEB COPY

calling upon the third respondent to submit his explanation. The third respondent submitted his explanation on 21.10.2015, but it was found to be unsatisfactory. So, an Enquiry Officer was appointed in accordance with Rule 54(1)(ii) of the Pondicherry School Education Rules, 1996 through a memorandum dated 27.02.2016. The third respondent had actively participated in the disciplinary enquiry and it was pending. Under such circumstances, the first respondent has issued a notification by referring the industrial dispute to the Labour Court which is not maintainable.

6. Mr.M.Nirmal Kumar, learned Government Advocate (Pondy) for the respondents 1 and 2 submitted that the petitioner having participated in the reference, cannot challenge the same by filing a Writ Petition. As there is no lack of jurisdiction or delay and laches, no grounds are available to the petitioner to challenge the notification issued by the first respondent. The order passed in W.P.No.9524 of 2016, did not set aside the reference, instead the second respondent / Conciliation Officer has been directed to consider the reply of the petitioner School and pass



W.P.No.13619 of 2024

WEB COPY

orders. Hence, the petitioner does not have any *locus* to raise the legality of the reference in this Writ Petition. During the pendency of the enquiry under any other Act, if a reference is made by the Government under Section 10 of the Industrial Disputes Act, pending disciplinary proceedings cannot be continued.

7. Mr.Balan Haridas, learned counsel for the third respondent submitted that as the two enactments *viz.*, the Industrial Disputes Act and the Pondicherry School Education Act comes to the benefit of the employee, he can exercise his right under the doctrine of election. As the third respondent thought it fit that the Industrial disputes Act is beneficial to him, he had chosen to file an industrial dispute. As the third respondent was terminated orally and was not allowed to work, he had raised the industrial dispute.

8. Admittedly, in the earlier Writ Petition filed in W.P.No.9524 of 2016 the notice issued by the second respondent calling upon the petitioner School for enquiry / conciliation was under challenge. In the



W.P.No.13619 of 2024

WEB COPY

order dated 17.07.2023, the competency of the second respondent to make a reference with regard to the third respondent's employment with the petitioner has not been dealt. The order has simply directed the second respondent to consider the reply of the petitioner and then pass orders. Consequent to the said direction, the second respondent has made a conciliation failure report and submitted it to the Government. Thereafter, the first respondent Government had issued a notification for referring the dispute to the Labour Court.

9. The petitioner School is a recognised Unaided Private Minority School which is governed under the Pondicherry School Education Act. According to Section 2(g) of the Act, the employee of the School covered under the Act means "*a teacher and it included every other employee working in a recognised school*". Undoubtedly, the third respondent who has been appointed as a driver would come under the purview of the definition of "*employee*" as found under the Pondicherry School Education Act.

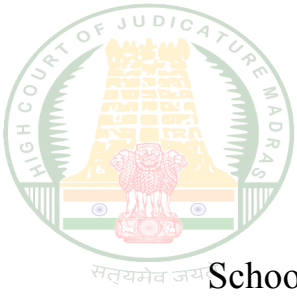


W.P.No.13619 of 2024

WEB COPY

10. Section 19 of the Act would prescribe that *"every teacher and every other person employed in any recognised school shall be governed by such Code of Conduct that may be prescribed and any teacher or other person so employed shall be subjected to disciplinary action for violation of the Code of Conduct"*. Section 21 of the Act would state that *"any teacher or other person employed in any recognised school is dismissed, removed or reduced in rank or whose appointment is otherwise terminated, can prefer an Appeal against the order to such authority or officer not below the rank of the Director of Education (Pondy)"*. The Act also contains the most important provision in Section 25 which would state that the provisions of this Act would have the overriding effect for any other law at that time in force.

11. The Code of Conduct was given under Appendix - II of the Pondicherry School Education Rules, 1996. The third respondent being the employee of the School, no doubt he is subject to the Code of Conduct found under Appendix - II r/w Rule 48 of the Pondicherry



W.P.No.13619 of 2024

WEB COPY

School Education Rules. As per the Code of Conduct, every employee should be at the disposal of the Institution and serve the Institution in all its activities in such places as he may be posted from time to time. The allegation against the third respondent is that he was instructed to handle a Carrier Van and he protested that he would handle only School Bus.

12. The third respondent who was employed as a driver, is expected to handle any kind of vehicle of the School without insisting that he would operate only a certain vehicle. In fact, the third respondent himself had written letters to the petitioner School asking them to allow him to operate the School Bus. As the petitioner was not willing to allow the third respondent to engage himself with the School Bus, there appeared some unwillingness on the part of the third respondent and that had resulted in the disciplinary action initiated against him. When the same was pending, the third respondent has sent letters to various authorities including the second respondent.

13. According to the petitioner, the pendency of the disciplinary



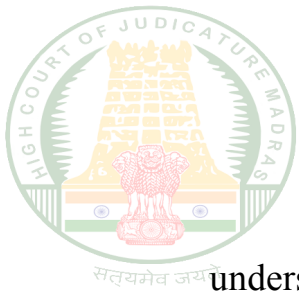
W.P.No.13619 of 2024

WEB COPY

action cannot be considered as a dispute arising under the Industrial Disputes Act unless it had culminated into an order of dismissal. Even in the case of suffering the major penalty, the employees have got their statutory remedy only by way of preferring a First and Second Appeal under Sections 21 and 22 respectively of the Act. So it is claimed by the petitioner that in view of the *non obstante* clause and overriding effect assured under Section 25 of the Act, the Industrial Dispute Act cannot be made applicable and the second respondent has exceeded his jurisdiction in conducting the conciliation proceedings and submitted the failure report which had culminated into the impugned order of reference before the Labour Court.

14. However, it is claimed by the third respondent that he would fall under the definition of workman under the Industrial Disputes Act as well and hence, he is entitled to invoke a better remedy available to him by choosing among multiple remedies available under more than one statute.

15. Before adverting into the jurisdiction, it is essential to have an



W.P.No.13619 of 2024

WEB COPY

understanding about Section 10 of the Industrial Disputes Act through which a reference is being made. As per Section 10 of the Industrial Disputes Act, "*before making any reference, the Government has to form an opinion as to the existence of an industrial dispute or even an apprehension about the dispute and then, pass an order in writing*". Now a question would come whether Section 10 refers to the industrial dispute defined under Section 2(k) or under Section 2-A.

16. No doubt Section 2-A refers about a dispute arising out of discharge, dismissal or retrenchment of an individual and it is a latest addition by way of an amendment to the Industrial Dispute Act by the Amendment Act 35 of 1965 with effect from 01.12.1965. The above amendment had enhanced the scope of the industrial dispute as inclusive of disputes between the employer and an individual workman. But however, a separate mechanism has been prescribed under Section 2-A (2), irrespective of Section 10 of the Act. And the disputes are limited to those arising out of discharge, dismissal and retrenchment of individual workman and by prescribing a limitation of three years [(Section 2-A(3)]



W.P.No.13619 of 2024

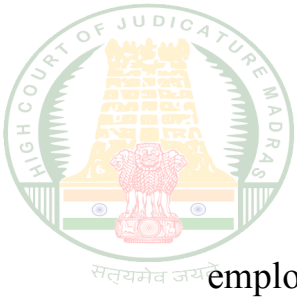
WEB COPY

from the date of discharge, dismissal, retrenchment or termination.

17. So, a reference under Section 10 is available only to those disputes defined under Section 2(k). The term "*industrial dispute*" defined under Section 2(k) of the Industrial Dispute Act is as below:

"2(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."

18. From the above definition of the term "*industrial dispute*" seen under Section 2(k), it can be safely concluded that it indicates and includes only those collective difference and not one to one difference found under Section 2-A. To make it more specific to attract a reference under Section 10, the dispute or difference should be between, (i) the employers and the employers, (ii) the employers and the workmen and (iii) the workmen and workmen. Further, the scope of such disputes can span from employment, non-employment or the terms of the



W.P.No.13619 of 2024

WEB COPY

employment.

19. So far as the dispute between an individual and the employer is concerned, the remedy by way of raising an industrial dispute can be availed only under Section 2-A and not under Section 2(k). The case of the third respondent is that he has been illegally terminated and hence, aggrieved. Such kind of individual grievance can be considered as an industrial dispute but only under Section 2(A) of the Industrial Disputes Act. If an individual workman is affected and wishes to raise an industrial dispute, he can straight away file an application to the Labour Court after expiry of 45 days from the date he has made an application to the Conciliation Officer. In the instant case, even if the Conciliation Officer is assumed to have the jurisdiction to decide the application of the third respondent, it should have been treated as an individual dispute raised by an individual workman and not a collective dispute for which reference can be made by the Government under Section 10(1)(c) of the Act.

20. So the very course adopted by the second respondent in



W.P.No.13619 of 2024

WEB COPY

inviting a reference from the first respondent Government under Section 10(1)(c) and 10-B itself is improper, apart from the fact of eligibility of the third respondent to raise an industrial dispute under the Industrial Disputes Act.

21. Even the third respondent does not contend that he cannot be governed under the Pondicherry School Education Act and Rules, but he claims that he has more than one remedy and hence, he opted to choose the remedy under the Industrial Disputes Act. In this regard, it is relevant to refer Section 25(J) of the Industrial Dispute Act which reads as under:

"25-J. Effect of laws inconsistent with this Chapter --

(1) The provisions of this Chapter shall have effect notwithstanding anything inconsistent therewith contained in any other law under the industrial employment (Standing Orders) Act, 1946.

(2) For the removal of doubts, it is hereby declared that nothing contained in this Chapter shall be deemed to affect the provisions of any other law for the time being in force in any State insofar as that law provides for the settlement of industrial disputes, but the rights and



WEB COPY



W.P.No.13619 of 2024

liabilities of employers and workmen insofar as they relate to lay-off and retrenchment shall be determined in accordance with the provisions of this Chapter."

22. The proviso to Section 25(J)(1) states that a workman is entitled to get more favourable benefits available to him than the benefits provided under the Industrial Disputes Act. It has a *non obstante* clause and hence the Act will have an effect notwithstanding anything inconsistent contained in any other law under the Industrial Employment (Standing Orders) Act, 1946.

23. However, the sub-clause (2) of Section 25(J) would state that the provisions of the Industrial Disputes Act shall not affect the provisions of any other law of the State for the time being in force insofar as that law provides for the settlement of industrial disputes. Even in that case the rights and liabilities of the employees and workmen relating to lay off or retrenchment can be dealt only in accordance with the provisions of the Industrial Disputes Act.

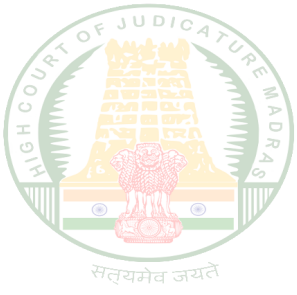


W.P.No.13619 of 2024

WEB COPY

24. Now coming back to the Pondicherry School Education Act, it is a self contained Act which has all the provisions for the conduct and discipline of the employees of the School. Any employee violating the Code of Conduct will be subjected to disciplinary proceedings and such proceedings shall be initiated in accordance with the procedure laid down therein. The aggrieved employee has also got avenues of appeal in case he was punished at the end of the disciplinary proceedings. Section 25 of the Pondicherry School Education Act also has got a *non obstante* clause for its application over any other Act and to have an overriding effect.

25. A contention was raised by the third respondent that the concept of overriding effect would occur only when there is an inconsistency between the two provisions of two different Acts and there is no inconsistency between the provisions of the Industrial Disputes Act and the Pondicherry School Education Act. So it is claimed that the third respondent can invoke a remedy under the Industrial Disputes Act also.

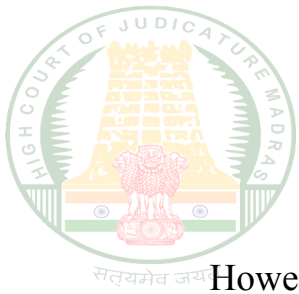


W.P.No.13619 of 2024

WEB COPY

26. Under the scheme of Pondicherry School Education Act, authority has been given to the School Management to deal with its employees whenever they violate the rules of discipline attached to their service. The State Act came into force subsequent to the Industrial Disputes Act.

27. As per Article 254 of the Constitution of India, when there is an inconsistency between the laws made by the Parliament and the laws made by the Legislation of the State in respect of any one of the matters enumerated in the Concurrent List, the law made by the Parliament irrespective of the matter whether it has been passed before or after the law made by the State, shall prevail over the State law. The State law to the extent of the repugnancy shall be void. But as per clause 2 of the Article 254, any of the provisions of the State law in respect of the matters enumerated in the Concurrent List has any provision repugnant to any of the provisions of the earlier law made by the Parliament, the law made by the State shall if it has been reserved for consideration of the President and received his assent, later would prevail in the State.



W.P.No.13619 of 2024

WEB COPY

However, this shall not prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.

28. In this regard, it is relevant to refer the judgment of the Hon'ble Supreme Court held in the case of ***Krishna District Co-operative Marketing Society Limited, Vijayawada Vs. N.V.Purnachandra Rao and Others, reported in (1987) 4SCC 99***. In the said judgment paragraph Nos. 8 and 9 are extracted hereunder:

"8. We shall now proceed to consider the merits of the contention that the State Act which is a later Act and which has received the assent of the President should prevail over the provisions of Chapter V-A of the Central Act. The above contention is based on [Article 254\(2\)](#) of the Constitution and the argument is that the provisions of [section 40](#) which deal with termination of service, in a shop or an establishment contained in the State Act which is enacted by the State Legislature in exercise of its powers under Entry 22 of List III of the Seventh Schedule to the Constitution being repugnant to the provisions contained in Chapter V-A of the Central Act which is an earlier law also traceable to Entry 22 of the List III of



WEB COPY



W.P.No.13619 of 2024

the Seventh Schedule to the Constitution should prevail as the assent of the President has been given to the State Act. It is true that the State Act is a later Act and it has received the assent of the President but the question is whether there is any such repugnancy between the two laws as to make the provisions of the Central Act relating to retrenchment ineffective in the State of Andhra Pradesh. It is seen that the State Act does not contain any express provision making the provisions relating to retrenchment in the Central Act ineffective insofar as Andhra Pradesh is concerned. We shall then have to consider whether there is any implied repugnancy between the two laws. Chapter V-A of the Central Act which is the earlier law deals with cases arising out of lay-off and retrenchment. Section 25J of the Central Act deals with the effect of the provisions of Chapter V-A on other laws inconsistent with that Chapter. Sub-section (2) of [section 25J](#) is quite emphatic about the supremacy of the provisions relating to the rights and liabilities arising out of lay-off and retrenchment. These are special provisions and they do not apply to all kinds of termination of services. Section 40 of the State Act deals generally with termination of service which may be the result of



WEB COPY



W.P.No.13619 of 2024

misconduct, closure, transfer of establishment etc. If there is a conflict between the special provisions contained in an earlier law dealing with retrenchment and the general provisions contained in a later law generally dealing with terminations of service, the existence of repugnancy between the two laws cannot be easily presumed. In Maxwell on the Interpretation of Statutes, (12th Edn.) at page 196 it is observed thus:

"Now if anything be certain it is this, "said the Earl of Selborne L.C. in The Vera Cruz, (1884) 10 App. Cas, 59 at p. 68 "that where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so." In a later case, Viscount Haldane said: "We are bound to apply a rule of construction which has been repeatedly laid down and is firmly



WEB COPY



W.P.No.13619 of 2024

established. It is that wherever Parliament in an earlier statute has directed its attention to an individual case and has made provision for it unambiguously, there arises a presumption that if in a subsequent statute the Legislature lays down a general principle, that general principle is not to be taken as meant to rip up what the Legislature had before provided for individually, unless an intention to do so is specially declared. A merely general rule is not enough even though by its terms it is stated so widely that it would, taken by itself, cover special cases of the kind I have referred to."

9. *We respectfully agree with the rule of construction expounded in the above passage. By enacting [section 25J\(2\)](#) Parliament, perhaps, intended that the rights and liabilities arising out of lay-off and retrenchment should be uniform throughout India where the Central Act was in force and did not wish that the State should have their own laws inconsistent with the Central law. If really the State Legislature intended that it should have a law of its own regarding the rights and*



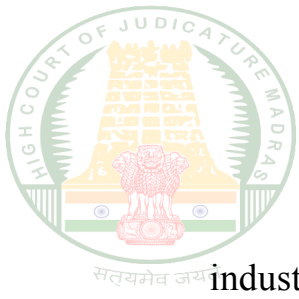
WEB COPY



W.P.No.13619 of 2024

liabilities arising out of retrenchment it would have expressly provided for it and submitted the Bill for the assent of the President. The State Legislature has not done so in this case. Section 40 of the State Act deals with terminations of service generally. In the above situation we cannot agree with the contention based on [Article 254\(2\)](#) of the Constitution since it is not made out that there is any implied repugnancy between the Central law and the State law."

29. But the nature of the Industrial Disputes Act which is comprehensive and special with regard to all kind of disputes between the employer and the workmen assumes a special status into it. Though it is earlier in point of time, no doubt it is a special Act. The superseding effect of the Parliament law and the State law would figure only if there is any repugnancy between any Central or State law. Both the Acts would fall under Entry 24 of the Concurrent List of Schedule VII. The Pondicherry School Education Act got the assent of the President on 28th October 1987, which is later in point of time. But the Pondicherry School Education Act cannot be considered as a special Act which governs the



W.P.No.13619 of 2024

WEB COPY

industrial dispute and it has the characteristics of regulating and ensuring the conduct and discipline of the employees of the school.

30. In the case of *Life Insurance Corporation of India Vs. D.J. Bahadur and others, reported in (1981) 1 SCC 315*, the Supreme Court has held that the Life Insurance Corporation could not prevail against the continuous flow of the benefits under the Industrial Disputes Act because the Industrial Disputes Act would prevail over the Life Insurance Corporation Act. In the said case, the Hon'ble Supreme Court has observed that special and general is wholly a creature of the subject and context and may vary with situation, circumstances and angle of vision. It is ultimately held that the regulation of condition of services including the non-payment of bonus enjoyed by the Corporation under the Life Insurance Act, stems out only from the very general Act and hence that cannot substitute or supplant the Industrial Disputes Act which itself a special legislation with regard to the disputes between the workmen and their employers.



W.P.No.13619 of 2024

WEB COPY

31. It is observed by the Supreme Court that the legal maxim 'generalia specialibus non derogant' is applicable only when there is a conflict between a special and a general statute. The Pondicherry School Education Act is not an exclusive later act which deals with the issues of labour dispute. It is a general act which is applicable to all those schools in Pondicherry. But the prior enactment of the Industrial Dispute Act is a special Act exclusively deals with the labour disputes of all establishment falling within its ambit and the remedies are available to all those who have been recognised as workman under the act. The rules of repugnancy will not apply if the earlier act happens to be a special one and the later Act is only a general one. The task of finding out which is special depends upon the scope of the respective acts. The same has been analysed in detail by the Supreme Court in *LIC* case and those special paragraphs of the said judgment is extracted as below:

"49. The next logical question then is as to whether the ID Act is a general legislation pushed out of its province because of the LIC Act, a special legislation in relation to the Corporation employees. Immediately, we



WEB COPY



W.P.No.13619 of 2024

are confronted with the question as to whether the LIC Act is a special legislation or a general legislation because the legal maxim generalia specialibus non derogant is ordinarily attracted where there is a conflict between a special and a general statute and an argument of implied repeal is raised. Craise states the law correctly:

"The general rule, that prior statutes are held to be repealed by implication by subsequent statutes if the two are repugnant, is said not to apply if the prior enactment is special and the subsequent enactment is general, the rule of law being, as stated by Lord Selbourne in Mary Seward v. Veera Cruz(3) "that where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so."

"There is a well-known rule which has application to this case, which is that a



WEB COPY



W.P.No.13619 of 2024

subsequent general Act does not affect a prior special Act by implication. That this is the law cannot be doubted, and the cases on the subject will be found collected in the third edition of Maxwell is generalia specialibus non derogant- i.e. general provisions will not abrogate special provisions. "When the legislature has given its attention to a separate subject and made provision for it, the presumption is that a subsequent general enactment is not intended to interfere with the special provision unless it manifests that intention very clearly. Each enactment must be construed in that respect according to its own subject matter and its own terms."

50. The crucial question which demands an answer before we settle the issue is as to whether the LIC Act is a special statute and the ID Act a general statute so that the latter pro tanto repeals or prevails over the earlier one. What do we mean by a special statute and, in the scheme of the two enactments in question, which can we regard as the special Act and which the general ? An implied repeal is the last judicial refuge and unless



WEB COPY



W.P.No.13619 of 2024

driven to that conclusion, is rarely restored to. The decisive point is as to whether the ID Act can be displaced or dismissed as a general statute. If it can be and if the LIC Act is a special statute the proposition contended for by the appellant that the settlement depending for its sustenance on the ID Act cannot hold good against Sect.11 and Sec.49 of the LIC Act, read with Reg. 58 thereunder. This exercise constrains me to study the scheme of the two statutes in the context of the specific controversy I am dealing with.

51. There is no doubt that the LIC Act, as its long title suggests, is an Act to provide for the nationalisation of life insurance business in India by transferring all such business to a Corporation established for the purpose and to provide for the regulation and control of the business of the Corporation and for matters connected therewith or incidental thereto. Its primary purpose was to nationalise private insurance business and to establish the Life Insurance Corporation of India. Inevitably, the enactment spelt out the functions of the Corporation, provided for the transfer of existing life insurance business to the Corporation and set out in detail how the management, finance, accounts and audit



WEB COPY



W.P.No.13619 of 2024

of the Corporation should be conducted. Incidentally, there was provision for transfer of service of existing employees of the insurers to the Corporation and, sub-incidentally, their conditions of service also had to be provided for. The power to make regulations covering all matters of management was also vested in appropriate authorities. It is plain and beyond dispute that so far as nationalisation of insurance business is concerned, the LIC Act is a special legislation, but equally indubitably, is the inference, from a bare perusal of the subject, scheme and sections and understanding of the anatomy of the Act that it has nothing to do with the particular problem of disputes between employer and employees, or investigation and adjudication of such disputes. It does not deal with workmen and disputes between workmen and employers or with industrial disputes. The Corporation has an army of employees who are not workmen at all. For instance, the higher echelons and other types of employees do not fall within the scope of workmen as defined in Sec.2(s) of the ID Act. Nor is the Corporation's main business investigation and adjudication of labour disputes any more than a motor manufacturer's chief business is spraying paints!



WEB COPY



W.P.No.13619 of 2024

52. *In determining whether a statute is a special or a general one, the focus must be on the principal subject matter plus the particular perspective. For certain purposes, an Act may be general and for certain other purposes it may be special and we cannot blur distinctions when dealing with finer points of law. In law, we have a cosmos of relativity, not absolutes-so too in life. The ID Act is a special statute devoted wholly to investigation and settlement of industrial disputes which provides definitionally for the nature of industrial disputes coming within its ambit. It creates an infrastructure for investigation into, solution of and adjudication upon industrial disputes. It also provides the necessary machinery for enforcement of awards and settlements. From alpha to omega the ID Act has one special mission-the resolution of industrial disputes through specialised agencies according to specialised procedures and with special reference to the weaker categories of employees coming within the definition of workmen. Therefore, with reference to industrial disputes between employers and workmen, the ID Act is a special statute, and the LIC Act does not speak at all with specific reference to workmen. On the other hand, its*



WEB COPY



W.P.No.13619 of 2024

powers relate to the general aspects of nationalisation, or management when private businesses are nationalised and a plurality of problems which, incidentally, involve transfer of service of existing employees of insurers. The workmen qua workmen and industrial disputes between workmen and the employer as such, are beyond the orbit of and have no specific, or special place in the scheme of the LIC Act. And whenever there was a dispute between workmen and management the ID Act mechanism was resorted to.

53. What are we confronted with in the present case, so that I may determine as between the two enactments which is the special ? The only subject which has led to this litigation and which is the bone of contention between the parties is an industrial dispute between the Corporation and its workmen qua workmen. If we refuse to be obfuscated by legal abracadabra and see plainly what is so obvious, the conclusion that flows, in the wake of study I have made, is that vis a vis 'industrial disputes' at the termination of the settlement as between the workmen and the Corporation the ID Act is a special legislation and the LIC Act a general legislation. Likewise, when compensation on



WEB COPY



W.P.No.13619 of 2024

nationalisation is the question, the LIC Act is the special statute. An application of the generalia maxim as expounded by English text-books and decisions leaves us in no doubt that the ID Act being special law, prevails over the LIC Act which is but general law."

32. After making a thorough discussion on the concept of repugnancy between the later general Act and the earlier special Act and the resultant overriding effect, the following conclusions have been arrived by the Supreme Court in the above Life Insurance Corporation of India case under paragraph No.115 and it is extracted hereunder:

"115. The criteria deducible from the texts of the three standard works just above-quoted are stated below:

(i) The legislature has the undoubted right to alter a law already promulgated by it through subsequent legislation.

(ii) A special law may be altered, abrogated or repealed by a later general law through an express provision.

(iii) A later general law will override a prior special law if the two are so repugnant to each other that they cannot coexist even though no express provision in



WEB COPY



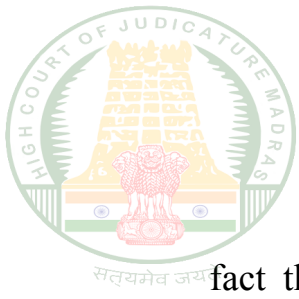
W.P.No.13619 of 2024

that behalf is found in the general law.

(iv) It is only in the absence of an express provision to the contrary and of a clear inconsistency that a special law will remain wholly unaffected by a later general law."

33. The Pondicherry School Education Act regulates the matters connecting to school education which is inclusive of Code of Conduct that should be followed by the employees of the School. As per the Act, the School Management has got right to initiate action against the employees for any misconduct. It does not provide any mechanism for settlement of a dispute between the employer and the employee, as how the Industrial dispute Act provides.

34. Both the petitioner and the respondents have cited various judgments in support of their respective arguments as to which of the Act will prevail over the other in case of any inconsistency. The instant case does not have any base on repugnancy or inconsistency. In fact both the Acts work on different platform and entirely for different situations. In



W.P.No.13619 of 2024

WEB COPY

fact the applicability of the Industrial Dispute Act arises only after a workman suffers a termination, which got confirmed by the Appellate Authority. Hence all those judgements have not been taken up for discussion, except to the extent they are necessary.

35. So far as the third respondent is concerned, he was subjected to disciplinary proceedings and the same was pending for enquiry. Even before the completion of the same, he has sent some applications to various authorities including the second respondent and that was treated by the second respondent as an application filed under Industrial Disputes Act. The second respondent did not think for a moment whether the disciplinary proceedings initiated against the third respondent has been completed or not. Even when the petitioner School has submitted its reply narrating all the incidents and also the fact that the disciplinary proceedings against the third respondent was still pending, the second respondent went on to conduct the conciliation proceedings as though there is an industrial dispute and filed a failure report to the Government.



W.P.No.13619 of 2024

WEB COPY

36. The learned counsel for the third respondent cited the judgment of the Hon'ble Supreme Court held in the case of *Raj Kumar Vs. The Director of Education and Others, reported in (2016) 6 SCC 541*, in support of his contention and submitted that the Industrial Disputes Act would prevail over the State Act. But the above case revolves around the retrenchment and hence, it has got no application to the facts of this case. Despite the third respondent has got his own Conditions of Service and Code of Conduct under the Pondicherry School Education Act, he had straight away gone to the second respondent. Had the third respondent's termination was due to the retrenchment, no doubt he is entitled to raise a dispute before the Labour Court in view of Section 25(J)(2) of the Industrial Disputes Act. But it is not a case here. The third respondent has raised an industrial dispute not only in a pre-matured manner and completely deviating from the mechanism provided for individual industrial dispute under Section 2-A of the Industrial Disputes Act.

37. Once the third respondent has chosen to subject himself to the jurisdiction of the Enquiry Officer by filing his explanation, he ought to



W.P.No.13619 of 2024

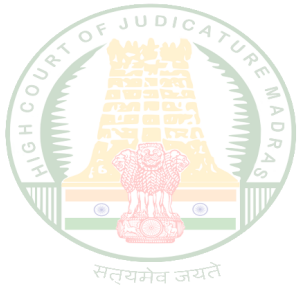
WEB COPY

have waited for completion of the enquiry proceedings. Even without any order of termination or any appeal preferred challenging the same, the third respondent presumed termination and approached the second respondent for conciliation. As the second respondent has exercised his jurisdiction unnecessarily in a pending disciplinary action and the first respondent has also made a reference to the Labour Court unmindful of the individualistic and pending nature of the disciplinary proceedings, the reference is liable to be set aside.

38. In the result, this Writ Petition is allowed and the impugned Notification in G.O.Rt.No.47/LAB/AIL/S/2024 dated 22.04.2024 issued by the first respondent is set aside. It is needless to add that the petitioner is entitled to continue the disciplinary proceedings against the third respondent from the stage where it was stalled and complete the same at the earliest. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes
Speaking
Neutral Citation : Yes
gsk

21.01.2025



WEB COPY

To

- 1.The Under Secretary to Govt. (Labour),
The Union Territory of Puducherry,
Labour Department,
Govt. of Puducherry, Puducherry.
- 2.The Labour Officer (Conciliation),
Office of the Labour Officer (Conciliation),
15, First Floor, Nehru Nagar,
Puducherry 605 011.

W.P.No.13619 of 2024

R.N.MANJULA, J.

gsk

W.P.No.13619 of 2024 and
W.M.P.No.14771 of 2024

21.01.2025