

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR.

O R D E R.

(1) S.B.CIVIL WRIT PETITION NO 2189/2005.

(Managing Committee, v. Shri Jetha Ram
Rao Tularam Rashtrya and Others.
Unnati Vidyalaya No.2,
Patel Nagar, Bikaner.

(2)S.B.CIVIL WRIT PETITION NO.2230/2005.

Managing Committee, v. Shri Ram Gopal
Rao Tularam Rashtrya and Others.
Unnati Vidyalaya No.2,
Patel Nagar, Bikaner.

(3)S.B. CIVIL WRIT PETITION NO.2312/2005

Managing Committee, v. Shri Udai Krishna
Rao Tularam Rashtrya and Others.
Unnati Vidyalaya No.2,
Patel Nagar, Bikaner.

All the above-mentioned writ petitions
under Articles 226 and 227 of the
Constitution of India.

DATE OF ORDER:

JUNE 2, 2005.

PRESENT.

HON'BLE MR. JUSTICE R.P.VYAS

Mr.G.K.Vyas, for Petitioners.
Mr.D.P.Sharma, for Respondents.

BY THE COURT:

REPORTABLE

A common question is involved in all the aforesaid three

writ petitions, therefore, the above-mentioned petitions are decided by this order.

By the aforesaid petitions, the petitioners – Management Committee seeks to quash and set aside the judgment dated 20.11.2004 (Annexure 5) delivered by the Rajasthan Non-Government Educational Institutions Tribunal, Jaipur (hereinafter referred to as 'the Tribunal').

Brief facts giving rise to the instant petitions are that it has been averred in the appeal before the Tribunal that Shri Udai Krishna Yadav, Shri Jetha Ram and Shri Ram Gopal Yadav were appointed by the petitioner – Institution on the posts of L.D.C., Class IV, and Teacher Grade III, respectively. Their services were terminated by the Petitioner – Institution by order dated 16.5.2002.

Against the impugned order of termination, they preferred an appeal before the Tribunal.

The appeal was allowed by the Tribunal by a common judgment dated 20.11.2004 (Annexure 5) and the order dated 16.5.2002, passed by the petitioner - Institution, terminating the services of its employees, was quashed and set aside. The employees were ordered to be reinstated in service of the

petitioner – Institution, with all consequential benefits.

Aggrieved from the order of the Tribunal dated 20.11.2004 (Annexure 5), the instant petitions have been filed.

It is submitted by the learned counsel for the petitioner that the Institution is registered under the Rajasthan Societies Act and the services of its employees are governed by the Rules and Regulations framed under the the Rajasthan Non-Government Educational Institutions Act, 1989 (hereinafter referred to as 'the Act, 1989') and the Rajasthan Non-Government Educational Institutions (Recognition, Grants-in-aid and Service Conditions etc.) Rules, 1993 (for brevity, 'the Rules, 1993').

It is further submitted by the learned counsel for the petitioners that that the respondents were working against the aided posts and in the event of abolition of posts and curtailments of funds, the services of the respondents were dispensed with by order dated 16.5.2002 by the Institution.

The petitioner-Institution is getting financial aid from the State Government in accordance with the Act, 1989 and the Rules, 1993.

It is also submitted that the appeal, which was filed by the employees – respondents before the Tribunal was not maintainable under Section 19 of the Act, 1989, because the order dated 16.5.2002 is not a stigmatic order and it cannot be

termed as an order for removal, dismissal or reduction in rank.

Learned counsel for the petitioner – Institution has invited my attention to Sections 18, 19, 21, 26 and 40 of the Act, 1989 and Rules 39 and 40 of the Rules, 1993 and submitted that the as per Section 18 of the Act, 1989, a recognised Institution can remove, dismiss or reduce in rank any of its employees . It is submitted by the learned counsel for the petitioner-Institution that from a bare perusal of the impugned order dated 16.5.2002, it is clear that this is not an order of removal or dismissal or reduction in rank. Moreso, it is passed on the basis of an order issued by the Government on 21.12.2002, whereby 8 posts of Teacher and 3 posts of Class IV employees were abolished by the Government. Therefore, the services of the employees were dispensed with. Thus, according to the learned counsel, it is obvious that the consent of the Government was there.

Section 19 (1) of the Act provides that if a Managing Committee is aggrieved from the order of refusal made by the Director of Education under Section 18, it may prefer an appeal to the Tribunal constituted under Section 22 within 90 days of the date of receipt of the order. Similarly, as per Section 19 (2) an employee aggrieved by an order of the Managing Committee made under Section 18 may prefer an appeal to the said Tribunal within 90 days from the date of receipt of the said order,

meaning thereby is that as per Section 19 (2), if an employee is aggrieved from an order of the Managing Committee made under Section 18, he has a right to prefer an appeal to the said Tribunal within 90 days from the date of receipt of the order.

Learned counsel for the petitioner-Institution has also invited my attention to Rule 39 (2) of the Rules, 1993. Rule 39 (2) provides that an employee can be removed or dismissed from service on the grounds of insubordination, inefficiency, neglect of duty, misconduct or any other grounds, which makes the employee unsuitable for further retention in the service. It may be mentioned that before taking action of removal or dismissal from service under Rule 39 (2) of the Rules, 1993, the procedure laid down under sub-clauses (a) to (h) (iii) is required to be adopted by the managing committee (Petitioner – Institution). However, provisions of this rule shall not apply (i) where an employee is removed or dismissed from service on the ground of conviction on a criminal charge, or (ii) where it is not possible to give that employee an opportunity of showing cause, the consent of the Director of Education is obtained in writing, before the action of dismissal or removal from service is taken, or (iii) where the managing committee is of unanimous opinion that the services of an employee cannot be continued without prejudice to the interest of the institution, the services of such employees can be terminated after giving him six months notice

or salary in lieu thereof and the consent of the Director is obtained in writing.

It is pertinent to mention here that under Section 18 of the Act, 1989, action of removal, dismissal or reduction in rank of the employees can be taken, but prior to taking that action, two conditions, as mentioned in Section 18, namely (i) a reasonable opportunity of being heard before the action proposed to be taken; and (ii) prior approval of the Director of Education; are required to be fulfilled by the managing – committee. Thus, in this view of the matter, none of the provisions, as mentioned in Section 18 of the Act, 1989, as well as in Rule 39 (2) of the Rules, 1993 was followed by the managing committee, prior to passing the order of termination of services of its employees. Nor the managing committee has specified in the termination order dated 16.5.2002 that under which Rule or Act, the said order of termination has been passed by it. The petitioner-Institution has given the ground of abolition of 8 posts of teachers and 2 posts of peon, which is a flimsy ground and not acceptable in view of the peculiar facts and circumstances of the instant case.

It is submitted by the learned counsel that a legal objection to this effect was raised by the petitioner-Institution before the learned Tribunal, but the learned tribunal, while holding that the appeal is maintainable, allowed the appeal filed by the

respondent-employees and set aside the order of dispensing with the services of employees of the petitioner-Institution, defining that it is an order of termination and, subsequently, quashed and set aside the order dated 16.5.2002.

Learned counsel for the petitioner-Institution submitted that the appeal under Section 19 was not maintainable before the Tribunal, yet the Tribunal passed the judgment dated 20.11.2004 and quashed and set aside the order dated 16.5.2002. The Tribunal also ordered for reinstatement of the employees with all consequential benefits.

According to the learned counsel, the judgment of the Tribunal is illegal and is not in accordance with law, as the Tribunal has not looked into the provisions of the Act, 1989 and the Rules, 1993, in their right perspective.

The Act of 1989 and the Rules, 1993 have been framed with a view to provide better organization and development in the Non-Government Educational Institutions.

Before the commencement of the Act of 1989 and the Rules, 1993, there was practice of exploitation and harassment and the Legislature has regulated the terms and conditions of the Non-Government Educational Institutions running in the State of Rajasthan.

Under Section 43 of the Act, 1989, the State Government has been conferred with the powers to make rules for regulating

the terms and conditions of the recognised institutions as well as for providing them grants-in-aid.

The Legislature has prescribed the procedure for termination of services of the employees, which is mandatory in nature. It is worthwhile to mention here that under the Scheme of the Act of 1989 and the Rules, 1993, the services of an employee can be terminated, but only after compliance with the provisions of the Act of 1989 and the Rules, 1993, framed thereunder. In case of any inconsistency, the Act will prevail over the Rules, as the Rules are framed under the Act.

Sections 18, 19, 21, 26 and 40 of the Act, 1989 and Rules 39 and 40 of the Rules, 1993, referred to by the learned counsel which are relevant for deciding the controversy in hand, read as under :-

"Section 18. Removal, dismissal or reduction in rank of employees -

Subject to any rules that may be made in this behalf, **no employee of a recognised institution shall be removed, dismissed or reduced in rank unless he has been given by the management a reasonable opportunity of being heard against the action proposed to be taken:**

Provided that no final order in this regard shall be passed unless prior approval of the Director of Education or an officer authorised by him in this behalf has been obtained :

Provided further that this section shall not

apply,-

1. to a person who is dismissed or removed on the ground of conduct which led to his conviction on a criminal charge, or
2. where it is not practicable or expedient to give that employee an opportunity of showing cause, the consent of Director of Education has been obtained in writing before the action is taken, or
3. Where the managing committee is of unanimous opinion that the services of an employee cannot be continued without prejudice to the interest of the institution, the services of such employee are terminated after giving him six months notice or salary in lieu thereof and the consent of the Director of Education is obtained in writing.”

Section 19. Appeal to the Tribunal –

(1) If a managing committee is aggrieved from the order of refusal made by the Director of Education under Section 18, it may prefer an appeal to the Tribunal constituted under Section 22 within ninety days of the date of receipt of such order.

(2) An employee aggrieved from an order of the managing committee made under Section 18, may prefer an appeal to the said Tribunal within ninety days of the date of receipt of such order.”

“Section 21. Application to the Tribunal -

(1) Where there is any dispute between the management of a recognised institution and any of its employee with respect of the conditions of service, the management or the employee may make an application in the prescribed manner to the Tribunal and the decision of the Tribunal thereon shall be final.

(2) Any dispute of the nature referred to in sub-section (1) and any appeal of the nature referred to

in Section 19, pending before the State Government or any officer of the State Government immediately before the commencement of this Act, shall, as soon as may be after such commencement, be transferred to the Tribunal for its decision."

"Section 26. Decision of the Tribunal to be final--

The decision of the Tribunal shall be final and no suit or other proceeding shall lie in any Civil Court with respect to matters decided by it."

"Section 40. Overriding effect of the Act -

The provisions of this Act shall have effect notwithstanding anything inconsistent contained in any instrument having effect by virtue of any law."

Rule 39. Removal or Dismissal from Service -

(1) The services of an employee appointed temporarily for six months, may be terminated by the management at any time after giving atleast one month's notice or one month's salary in lieu thereof. Temporary employee, who wishes to resign shall also give atleast one month's notice in advance or in lieu thereof deposit or surrender one month's salary to the management.

(2) An employee, other than the employee referred to in sub-rule (1), may be removed or dismissed from service on the grounds of insubordination, inefficiency, neglect of duty, misconduct or any other grounds which makes the employee unsuitable for further retention in service. But the following procedure shall be adopted for the removal or dismissal of an employee :-

(a) A preliminary enquiry shall be held on the allegations coming into or brought to the notice of the management against the employee.

(b) On the basis of the findings of the preliminary enquiry report, a charge sheet alongwith statement of allegations shall be issued to the employee and he shall be asked to submit his reply within a reasonable time.

(c) After having perused the preliminary enquiry report and the reply submitted by the employee, if any, if the managing committee is of the opinion that a detailed enquiry is required to be conducted, a three member committee shall be constituted by it in which a nominee of the Director of Education shall also be included.

(d) During the enquiry by such enquiry committee, the employee shall be given a reasonable opportunity of being heard and to defend himself by means of written statement as well as by leading evidence, if any.

(e) The enquiry committee, after completion of the detailed enquiry, shall submit its report to the management committee.

(f) If the managing committee, having regard to the findings of the enquiry committee on the charges, is of the opinion that the employee should be removed or dismissed from service, it shall;

furnish to the employee a copy of the report of the enquiry committee.

Give him a notice stating the penalty of removal or dismissal and call upon him to submit within a specified time such representation as he may wish to make on the proposed penalty.

(g) In every case, the records of the enquiry together with a copy of notice given under sub-clause (f) (ii) above and the representation made in response to such notice if any, shall be forwarded by the managing committee to the Director of Education or any officer by authorised him in this behalf, for approval.

(h) On receipt of the approval as mentioned in sub-clause (g) above, the managing committee may issue appropriate order of removal or dismissal as the case may be and forward a copy of such order to the employee concerned and also to the Director of Education or the officer authorised by him in this behalf:

Provided that the provisions of this rule shall not apply :-

19. To an employee who is removed or dismissed on the ground of conduct which led to his conviction on a criminal charge, or
20. Where it is not practicable or expedient to give that employee an opportunity of showing cause, the consent of the Director of Education has been obtained in writing before the action is taken, or
21. Where the managing committee is of unanimous opinion that, the services of an employee cannot be continued without prejudice to the interest of the institution, the services of such employee are terminated after giving him six months notice or salary in lieu thereof and the consent of the Director of Education is obtained in writing”

Rule 40. Appeal –

(1) If the managing committee is aggrieved from the order of refusal made by the Director of Education under sub-rule (2) of rule 39, may prefer an appeal to the State Government within 90 days of the date of receipt of such order.

(2) An employee aggrieved from an order of the Managing Committee made under sub-rule (2) of rule 39 may prefer an appeal to the State Government within 90 days of the date of receipt of such order.”

It may be mentioned that the provisions of Section 18 of

the Act, 1989 and Rule 39 of the Rules, 1993 are mandatory in nature and the same ought to have been complied with before passing the order of termination.

Section 18 provides that no employee of a recognised institution shall be removed, dismissed or reduced in rank unless he has been given by the management a reasonable opportunity of being heard. It further provides that no final order shall be passed by the Institution unless prior approval of the Director of Education is obtained in writing. However, Section 18 shall not apply (i) where a person is dismissed or removed on the ground of conduct which led to his conviction on a criminal charge, or (ii) where it is not practicable to give an employee any opportunity of showing the cause, the consent of the Director of Education is also required to be obtained in writing, before the action is taken, or (iii) where the managing committee is of unanimous opinion that the services of an employee cannot be continued, without prejudice to the interest of the institution, then, in such a situation, services of that employee can be terminated, after giving him six months' notice or salary in lieu thereof. Not only that, in such a situation, even the consent of the Director of Education is required to be obtained in writing. In the instant case, prior to issuing the order dated 16.5.2002, neither a reasonable opportunity of hearing was given, nor prior approval of the Director of Education was obtained, nor six

months' notice or salary in lieu thereof was given by the petitioner – Institution. Thus, services of an employee can be terminated, only after following the due process of law prescribed under the Act as well as the Rules.

Likewise, Section 19 (2) provides that if any employee is aggrieved by the order passed by the managing committee made under Section 18, such employee may prefer an appeal to the said Tribunal within 90 days of the date of receipt of such order. In the instant case, the employees being aggrieved by the order dated 16.5.2002, have rightly preferred an appeal before the Tribunal under Section 19 of the Act.

Similarly, sub-section (1) of Section 21 of the Act, 1989 provides that when there is a dispute with regard to service conditions between the institution and its employee, the employee can move an application before the Tribunal and the decision of the Tribunal thereon shall be final. Here also, service conditions of employees have been affected by order dated 16.5.2002, thus, they have rightly filed an application before the Tribunal for redressal of their grievances.

Section 26 of the Act, 1989 provides that the decision of the Service Tribunal shall be final and no suit or other proceeding shall be taken in any Court with regard to the disputes decided by the Tribunal.

Lastly, Section 40 of the Act, 1989 provides that if there

is any inconsistency in the Act and the Rules, then the provisions of the Act shall have a overriding effect on the Rules, as the Rules have been framed under the Act and they are governed by the Act. The recognised Institutions are bound to comply with the provisions the Act as well as the Rules.

Rule 39 of the Rules, 1993 pertains to the removal or dismissal of the employee from service. Sub-rule (1) of Rule 39 provides that the services of the employee, who is appointed temporarily for a period of six months, can be terminated by the management, at any time, after giving him one month's notice or one month's salary in lieu of notice. Similarly, sub-rule (2) provides that the employee as mentioned in sub-rule (1) can be removed or dismissed from service on the grounds of subordination, inefficiency, neglect of duty or misconduct or any other grounds, which make the employee not suitable for the institution to retain his services. But, prior to that, the procedure mentioned in clauses (a) to (h) of sub-rule (2) or Rule 39 has to be followed. It may be mentioned here that the controversy in the instant case is with regard to termination of services of the employees by the recognised Institution. Sub-rule (2) of Rule 39 clearly provides that the employees can be removed or dismissed from service on the grounds of insubordination, inefficiency, neglect of duty, misconduct or any other grounds which make the employee unsuitable for further retention in the

service of the Institution. But, prior to taking any action, referred to above, the procedure laid down in sub-clauses (a) to (h) **shall** have to be adopted. It may be pointed out here that sub-clause (h) of sub-rule (2) of Rule 39 clearly provides that on receipt of approval of the Director of Education as mentioned in sub-clause (g), the Managing Committee may issue appropriate order of removal or dismissal as the case may be and forward a copy of such order to the employee concerned as well as to the Director of Education. It may also be pointed out here that sub-clause (h) (iii) provides that if the managing committee is of unanimous opinion that the services of an employee cannot be continued without prejudice to the interest of the institution, the services of such employee can be terminated **after giving him six months' notice or salary in lieu thereof** and the **consent of the Director of Education is obtained in writing.** It may be mentioned that obviously, in the instant case, prior to issuing the order dated 16.5.2002, neither six months' notice or salary in lieu thereof was given to the employees, nor consent of the Direction of Education was obtained in writing by the petitioner - Institution as required under Rule 39 of the Rules. The petitioner-Institution has not followed the procedure laid down under sub-rule (2) of Rule 39 of the Rules, 1993.

Rule 40 of the Rules, 1993 provides the procedure for

appeal by the managing committee as well as its employee. Sub-rule (1) of Rule 40 provides that if the managing committee is aggrieved by the order of the Director of Education made under sub-rule (2) of Rule 30, then it may prefer an appeal to the State Government within 90 days of the date of receipt of such order. Likewise, sub-rule (2) provides that if the employee is aggrieved from the order of the Managing Committee made under sub-rule (2) of Rule 39, then he may prefer an appeal to the State Government within 90 days of the date of receipt of such order. It may be mentioned here that Rule 40 (2) applies only in the case if the services of the employee have been dismissed or removed by the recognised Institution after following the procedure laid down under sub-rule (2) of Rule 39 of the Rules, 1993. Here, in the instant case, prior to issuing the order of terminating the services of the employees, the petitioner-Institution has not followed the procedure as required by sub-rule (2) of Rule 39 of the Rules.

Learned counsel for the respondents has raised objection to the maintainability of the writ petition and submitted that the writ petition of the petitioner-Institution is not maintainable as the petitioner has concealed the material fact that the State Government has refused to grant permission to the Institution to terminate the services of its employees and also ordered for their reinstatement in service.

Learned counsel for the respondents further submitted that services of the regularly selected employees cannot be terminated by the petitioner-Institution, particularly when the ad-hoc and temporary employees , namely Banwari Lal, Maya Himmat Singh are working as Class IV employees and Smt.Jaishree, Rajesh Rehila, Veena Manav, Veena Kumari, Anil Kumar Mamta Wadhwa, Vijaypal Singh, Madhu Jain, Manju Gupta and Santosh Devi are working as teachers .

Learned counsel for the respondents also submitted that the petitioner-Institution has issued transfer certificates (T.Cs.) to its students and have given them admission by opening a new school in the name and style of "Rashtra Pragati Vidyalaya", in the same premises, with a view to mislead the Higher Authorities, whereas, according to the provisions of the Act, 1989 and the Rules, 1993, any Institution cannot be opened within the radius of 2 kilometers.

Learned counsel for the respondents pointed out that the petitioner-Institution is duty bound to obey the direction of the Higher Authorities as per Rule 10 (xi) of the Rules, 1993, which reads as under :-

"Rule 10 (xi):

The institution shall promptly comply with all the instructions/orders/decisions given from time to time by the department for the proper running of the institution."

In this connection, it may be mentioned that the reduction

of 8 posts have been held unjustified by the Director of Education and he has stayed the reduction of the posts vide order dated 1.7.2002, till further orders. In pursuance of the order of the Director of Education, the District Education Officer vide order dated 6.7.2002 has ordered the petitioner-Institution to reinstate services of its employees. It may be pointed out here that vide letter dated 29.3.2003, issued by the Director, Primary Education, Rajasthan, Bikaner, reduction/abolition of posts of teachers has been cancelled. But the petitioner-Institution has not complied with the directions/orders of the Director of Education and has not reinstated its employees, whereas, according to Rule 10 (xi) of the Rules, 1993, the recognised institution is bound to comply with the instructions/order/decisions given by the Director of Education for proper and smooth running of the institution.

While referring to the case of Hardesh Daya Ram Thakur v. State of Maharashtra (W.L.C. (Supreme Court Civil) 2000 at P.486), it is submitted by the learned counsel for the respondents that if the statute prescribes a procedure for doing a thing, then the thing has to be done according the procedure.

It is further submitted by the learned counsel for the respondents that the petitioner-Institution has not filed a copy of the Resolution in order to prove the fact that the unanimous resolution was passed and the same was signed by the members

of the managing committee and in pursuance to that, the action has been taken in accordance with law.

It is also submitted by the learned counsel for the respondents that the basic concept of giving six months' salary is to pay all the dues to the employee and, thereafter, to give him the advance salary of six months. When the previous salary of the employee has not been paid, then no question of treating the salary as advance arises. In the instant case, the previous salary has not been given. The services of the employees have been terminated without following the due process of law. Thus, the action of the petitioner-Institution in terminating the services of the respondents is against the provisions of the Act, 1989 and the Rules, 1993.

According to the learned counsel, the termination order dated 16.5.2002 is arbitrary and unconstitutional and is not in accordance with the provisions of the Act, 1989 as well as the Rules, 1993.

It is further contended by the learned counsel for the respondents that so far as the reduction of eight posts is concerned, the reduction has been held unjustified by the Deputy Director vide order dated 16.5.2002 and the Director of Elementary Education has stayed the reduction of the posts till further orders vide order dated 1.7.2002 and the District

Education Officer has ordered to reinstate the services of the appellant vide order dated 6.7.2002. The Director of Elementary Education has ordered to the Deputy Director, Education, to the same effect, by which the reduction of the posts has been cancelled.

In the present case, the salary of earlier six months has not been given to the employees. Not only that, even the approval of the Director of Education has not been sought in writing. It may be mentioned here that the basic concept of giving six months' salary is to pay all the dues to the employee and, thereafter, give the advance salary of six months. When the previous salary of the employee has not been paid, then there arises no question of treating the salary as advance.

If there is any inconsistency in the provisions of the Act and the Rules, then, in terms of Section 40 of the Act, 1989 which has an overriding effect on the Rules, the provisions of the Act will prevail over the Rules, as the Rules are framed under the Act. The petitioner-Institution is duty bound to follow the provisions of the Act and the Rules, under which the procedure for termination of services has been provided, but the petitioner-Institution has failed to fulfill any of the requirements of the procedure and has on its own, for the reasons best known to it,

terminated the services of its employees in violation of the Act, 1989 and the Rules, 1993.

So far as the contention of the petitioner-Institution with regard to the abolition of post by the State Government is concerned, it is submitted that there arises no question of abolition when the State Government itself has refused to accept the proposal of abolition of the post. It appears that the petitioner has disregarded the directions of the State Government, by which the State Authorities have ordered to reinstate the employees.

Heard learned counsel for the parties.

It is admitted position that Shri Udai Krishna Yadav, Shri Jetha Ram and Shri Ram Gopal Yadav were appointed by the petitioner – Institution on the posts of L.D.C., Class IV, and Teacher Grade III, respectively and prior to terminating their services, , the proper procedure as provided under Section 18 of the Act, 1989 and Rule 39 (2) of the Rules, 1993 has not been followed by the petitioner-Institution.

However, it may be mentioned that sub-clause (h) (iii) of Rule 39 (2) provides that where the managing committee is of unanimous opinion that the services of an employee cannot be continued without prejudice to the interest of the institution, the services of such employee are terminated after giving after

giving him six months notice or salary in lieu thereof and the consent of the Director of Education is obtained in writing. It is significant to note that in the instant case prior to terminate the services of its employees vide order dated 16.5.2002, neither six months' notice or salary in lieu thereof, nor the consent of the Director of Education as mentioned in sub-clause (h) (iii) of Rule 39 (2) was obtained in writing. Thus, even if the managing committee is of unanimous opinion to terminate the services of its employees, yet the requirement of six months' notice of salary in lieu thereof as well as the consent of the Director of Education is required to be obtained. But that procedure has not been followed by the petitioner-Institution prior to issuing the order dated 16.5.2002, terminating the services of its employees.

It is also significant to note that the Director, Primary Education, Rajasthan, Bikaner vide letter dated 29.3.2003 has cancelled the reduction/abolition of posts of teachers and in pursuance thereto, the District Education Officer has ordered the petitioner-Institution to reinstate the services of its employees, but the petitioner-Institution has not complied with the directions/orders of the Higher Authority, whereas, according to Rule 10 (xi) of the Rules, 1993, the recognised institution is bound to comply with the instructions/orders/decisions given by the Director of Education for proper and smooth running of the

institution.

The petitioner-Institution has terminated the services of its employees on two grounds: (a) financial constraints; and (b) abolition of posts by the State Government.

So far as financial constraints are concerned, it may be mentioned the petitioner-Institution has opened another School in the name and style of "Rashtra Unnati Vidyalaya" and the transfer certificates (T.Cs.) have been issued to the students for admission in that school. Thus, it cannot be said that the number of students has reduced and financial burden lays on the Institution.

So far as abolition of the posts of eight teachers and two Class IV servants by the Government is concerned, it may be stated that though the order of abolition was issued by the Government, but the same was subsequently kept in abeyance vide order dated 16.5.2002 and it was stated that the employees whose services have been terminated, may be reinstated back in service, and the Office of the Director of Education may be sent their joining reports. But, admittedly, the order/instructions of the State Government were not followed by the petitioner-Institution, nor the terminated employees were informed by the petitioner-Institution about the order of abolition of post keeping in abeyance by the Government.

Thus, the Tribunal has rightly held that the petitioner-

Institution has not followed the orders of the State Government in letter and spirit. It is also admitted fact that no opportunity of hearing was given by the petitioner-Institution, nor the prior approval of the Director of Education was obtained.

So far as contention of the petitioner-Institution that services of the employees were terminated by a unanimous decision of the management committee, it may be stated here that it has clearly been mentioned in Section 18 (iii) that where the managing committee is of unanimous opinion that the services of an employee cannot be continued without prejudice to the interest of the institution, the services of such employee can be terminated **after giving him six months notice or salary in lieu thereof and the consent of the Director of Education is obtained in writing.** None of the conditions was fulfilled by the petitioner-Institution, prior to terminating the services of its employees vide order dated 16.5.2002.

If there is any inconsistency in the provisions of the Act, 1989 and the Rules, 1993, then the provisions of the Act will prevail over the Rules, as the Rules have been framed under the Act and the Act has an overriding effect by virtue of Section 40 of the Act, 1989.

In the instant case, it appears that no such procedure has been adopted by the petitioner-Institution. Hence, the argument of the petitioner-Institution that on account of abolition of the

posts and refusal of grants-in-aid by the State Government the decision to terminate the services of the employees has been taken unanimously by the managing committee, is not at all sustainable in the eye of law as the said decision has been taken by the managing committee, without following the procedure laid down under Section 18 of the Act, 1989 as well as Rule 39 (2) of the Rules, 1993. Thus, the petitioner-Institution has concealed the material facts and has not come to the Court with clean hands.

It is, thus, clear that the petitioner-Institution has passed the order of termination dated 16.5.2002 in non-compliance of Section 18 of the Act, 1989 and Rule 39 (2) of the Rules, 1993. Neither any Specific Act, nor the Rule has been mentioned, under the aforesaid termination order has been passed. The termination order dated 16.5.2002 is punitive in nature, by which the service conditions of the employees have been affected. The termination of service affects service conditions and the employees should have moved the application before the Tribunal under Section 21 of the Act, subject to appeal before the Tribunal under Section 19 (2) of the Act. But in the termination order dated 16.5.2002, no specific Act/Rule has been mentioned, under which the said order has been passed by the petitioner-Institution. The termination order has affected the service conditions, but the action of the petitioner-Institution

has attracted Section 18 of the Act, 1989, therefore, respondents (employees) have rightly preferred an appeal under Section 19 (2) of the Act before the Tribunal. Apart from that, since the petitioner-Institution does not appear to have passed the order of termination under Rule 39 (2) of the Rules, 1993, Rule 40 (filing an appeal before the State Government) is not attracted. It is pertinent to mention here that vide order dated 6.7.2002, the petitioner-Institution was directed to re-instate the services of its employees, but the petitioner-Institution has not followed the directions of the Higher Authorities by not re-instanting its employees in service and, thus, violated Rule 10 (xi) of the Rules, 1993 also, referred to above.

In view of the aforesaid discussion and keeping in view all the facts and circumstances of the case in hand as well as taking an over all view of the matter, I am of the opinion that the judgment dated 20.11.2004 passed by the learned Tribunal is based on sound reasonings and correct appreciation of evidence available on record. It does not call for any interference by this Court under its supervisory jurisdiction under Article 227 of the Constitution of India.

I do not find any force in any of the aforesaid three writ petitions. The same are, therefore, hereby dismissed.

There will be no order as to costs.

(R.P.VYAS),J.

Scd.

