


HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR
राजस्थान उच्च न्यायालय

S.B. Civil Writ Petition No.19107/2023

1. Management Committee, Bharatiya Vidya Bhavan Vidyashram, K.m. Mushi Marg, In Front Of O.t.s, Jaipur Through Its Director Mr. Ramesh Chandra Jain.
2. President, Jaipur Centre, Bharatiya Vidya Bhavan Vidyashram, K.m. Mushi Marg, In Front Of O.t.s, Jaipur.

----Petitioners

Versus

1. Rameshwar Lal Meena, S/o Mr. Kalu Ram Meena, Aged About 54 Years, Resident Of Bharatiya Vidya Bhavan Vidyashram School, Hostel Campus, K.m. Mushi Marg, In Front Of O.t.s, Jaipur
2. Director, Secondary Education, Bikaner, Rajasthan.

----Respondents

Connected With

S.B. Civil Writ Petition No.19097/2023

1. Management Committee, Bharatiya Vidya Bhavan Vidyashram, K.m. Mushi Marg, In Front Of O.t.s, Jaipur Through Its Director Mr. Ramesh Chandra Jain.
2. President, Jaipur Centre, Bharatiya Vidya Bhavan Vidyashram, K.m. Mushi Marg, In Front Of O.t.s, Jaipur.

----Petitioners

Versus

1. Jai Singh Meena, S/o Mr. Bhiva Ram Meena, Aged About 54 Years, Resident Of Room No. 8, Bharatiya Vidya Bhavan Vidyashram School, Hostel Campus, K.m. Mushi Marg, In Front Of O.t.s, Jaipur.
2. Director, Secondary Education Bikaner, Rajasthan

----Respondents

S.B. Civil Writ Petition No.19098/2023

1. Management Committee, Bharatiya Vidya Bhavan Vidyashram, K.m. Mushi Marg, In Front Of O.t.s, Jaipur Through Its Director Mr. Ramesh Chandra Jain.
2. President, Jaipur Centre, Bharatiya Vidya Bhavan Vidyashram, K.m. Mushi Marg, In Front Of O.t.s, Jaipur.

----Petitioners

Versus

1. Ramesh Chand Dubey, S/o Mr. Ram Dulare Dubey, Aged About 52 Years, Resident Of Bharatiya Vidya Bhavan Vidyashram School Hostel Campus, K.m. Mushi Marg, In Front Of O.t.s, Jaipur.
2. Director, Secondary Education, Bikaner, Rajasthan.

----Respondents

S.B. Civil Writ Petition No.19099/2023

1. Management Committee, Bharatiya Vidya Bhavan Vidyashram K.m. Mushi Marg, In Front Of O.t.s., Jaipur Through Its Director Mr. Ramesh Chandra Jain.
2. President, Jaipur Centre, Bharatiya Vidya Bhavan Vidyashram, K.m. Mushi Marg, In Front Of O.t.s. Jaipur.

----Petitioners

Versus

1. Rajendra Singh Jadon S/o Mr. Brij Raj Singh, Aged About 52 Years, Resident Of Bharatiya Vidya Bhavan Vidyashram School, Hostel Campus, K.m. Mushi Marg, In Front Of O.t.s. Jaipur.
2. Director, Secondary Education, Bikaner, Rajasthan

----Respondents

S.B. Civil Writ Petition No.19100/2023

1. Management Committee, Bharatiya Vidya Bhavan Vidyashram, K.m. Mushi Marg, In Front Of O.t.s, Jaipur Through Its Director Mr. Ramesh Chandra Jain.
2. President, Jaipur Centre, Bharatiya Vidya Bhavan Vidyashram, K.m. Mushi Marg, In Front Of O.t.s, Jaipur.

----Petitioners

Versus

1. Jagat Singh Bhandari S/o Mr. Kesar Singh, Aged About 42 Years, Resident Of Bharatiya Vidya Bhavan Vidyashram School, Hostel Campus, K.m. Mushi Marg, In Front Of O.t.s, Jaipur.
2. Director, Secondary Education, Bikaner, Rajasthan.

----Respondents

S.B. Civil Writ Petition No.19103/2023

1. Management Committee, Bharatiya Vidya Bhavan Vidyashram, K.m. Mushi Marg, In Front Of O.t.s, Jaipur Through Its Director Mr. Ramesh Chandra Jain.
2. President, Jaipur Centre, Bharatiya Vidya Bhavan Vidyashram. K.m. Mushi Marg, In Front Of O.t.s, Jaipur.

----Petitioners

Versus

1. Sita Ram Prajapat S/o Mr. Shri Damodar Prajapat, Aged About 48 Years, Resident Of Bharatiya Vidya Bhavan Vidyashram School, Hostel Campus, K.m. Mushi Marg, In Front Of O.t.s, Jaipur.

2. Director, Secondary Education, Bikaner, Rajasthan.

----Respondents

S.B. Civil Writ Petition No.19104/2023

1. Management Committee, Bharatiya Vidya Bhavan Vidyashram, K.m. Mushi Marg, In Front Of O.t.s, Jaipur Through Its Director Mr. Ramesh Chandra Jain.
2. President, Jaipur Centre, Bharatiya Vidya Bhavan Vidyashram., K.m. Mushi Marg, In Front Of O.t.s, Jaipur.

----Petitioners

Versus

1. Ram Ketar Pal S/o Mr. Gurudeen Pal, Aged About 53 Years, Resident Of Bharatiya Vidya Bhavan Vidyashram School, Hostel Campus, K.m. Mushi Marg, In Front Of O.t.s. Jaipur

2. Director, Secondary Education Bikaner, Rajasthan

----Respondents

S.B. Civil Writ Petition No.19105/2023

1. Management Committee, Bharatiya Vidya Bhavan Vidyashram, K.m. Mushi Marg, In Front Of O.t.s, Jaipur Through Its Director Mr. Ramesh Chandra Jain.
2. President, Jaipur Centre, Bharatiya Vidya Bhavan Vidyashram. K.m. Mushi Marg, In Front Of O.t.s, Jaipur.

----Petitioners

Versus

1. Jai Ram Kumhar S/o Mr. Kallu Ram Kumhar, Aged About 42 Years, Resident Of Bharatiya Vidya Bhavan Vidyashram School, Hostel Campus, K.m. Mushi Marg, In Front Of O.t.s, Jaipur.
2. Director, Secondary Education, Bikaner, Rajasthan.

----Respondents

S.B. Civil Writ Petition No.19106/2023

1. Management Committee, Bharatiya Vidya Bhavan Vidyashram, K.m. Mushi Marg, In Front Of O.t.s, Jaipur Through Its Director Mr. Ramesh Chandra Jain.
2. President, Jaipur Centre, Bharatiya Vidya Bhavan Vidyashram, K.m. Mushi Marg, In Front Of O.t.s, Jaipur.

----Petitioners

Versus

1. Banwari Lal Kumhar, S/o Mr. Revad Mal, Aged About 54 Years, Resident Of Bharatiya Vidya Bhavan Vidyashram School, Hostel Campus, K.m. Mushi Marg, In Front Of O.t.s, Jaipur.
2. Director, Secondary Education, Bikaner, Rajasthan.

----Respondents

For Petitioner(s) : Ms. Gauri Jasana for
Mr. Prateek Kasliwal

For Respondent(s) : Mr. B.S. Chhaba, AAG with
Mr. Rahul Gupta

Mr. Prahlad Singh

JUSTICE ANOOP KUMAR DHAND

Order

Reserved on : 18/03/2025

Pronounced on : 28/03/2025

Reportable

1. Since common questions of facts and law are involved in all these writ petitions, hence, with the consent of counsel for the

parties, these matters are taken up together for final disposal and are being decided by this common order.

2. For the sake of convenience, the prayer mentioned in SB Civil Writ Petition No.19107/2023 has been taken into consideration, which reads as under:-

"(I) This writ petition may kindly be allowed and the impugned order dated 27.09.2023 (Annexure-3) passed by the Rajasthan Non-Government Educational Institutions Tribunal may kindly be quashed and set-aside by issuing the writ of Certiorari.

(II) Such other further order, directions or relief as may be deemed to be just and proper may kindly be passed in favor of the Humble Petitioners' institution."

3. By way of filing this writ petition, a challenge has been led to the impugned order dated 27.09.2023 passed by the Rajasthan Non-Government Educational Institutions Tribunal, Jaipur (hereinafter referred to as "the Tribunal") by which appeal filed by the respondent No.1 under Section 19 of the Rajasthan Non-Government Educational Institutions Act, 1989 (hereinafter referred to as "the Act of 1989") has been allowed and his termination order dated 08.03.2021 from the post of Class-IV employee has been quashed and set-aside and a direction has been issued to the petitioner-management to reinstate him, with continuity in service along-with 50% back-wages and other allowances.

4. Learned counsel for the petitioner-management submits that the respondent No.1 was engaged on the post of Class-IV employee in the hostel mess of the petitioner-management, but due to COVID 19 Pandemic, the hostel and the mess facilities were closed and, thereafter, the post of the staff in the mess facility was

abolished and, accordingly, services of the respondent were discontinued, as the same were not required by the petitioner-management. Learned counsel submits that the respondent-employees assailed the aforesaid action of the petitioner-management before the Tribunal by way of filing an appeal under Section 19 of the Act of 1989 and the same was allowed by the Tribunal by passing the order impugned holding that there was non-compliance of Section 18 of the Act of 1989. The provisions contained under Section 18 of the Act of 1989 were not applicable, in the facts and circumstances of the present case, as there was no order of dismissal or removal of the respondent instead the post upon which he was working was abolished and, accordingly, the order impugned was passed. Learned counsel submits that, under these circumstances, the order passed by the Tribunal is not sustainable in the eyes of law and is liable to be quashed and set-aside. In support of her contentions, she has placed reliance upon the judgment passed by the Division Bench of this Court in the case of **S.S. Jain Subhodh Shiksha Samiti Versus Seema Daya & others** while deciding **D.B. Civil Special Appeal (Writ) No.717/2002** vide order dated 20.12.2016.

5. *Per contra*, learned counsel for the respondent No.1 opposed the arguments raised by learned counsel for the petitioner-management and submitted that initially the respondent No.1 was appointed on temporary basis, but later on his services were confirmed by the Tribunal when he approached the Tribunal by way of filing an application in this regard. Learned counsel submits that the respondent No.1 was granted regular appointment on the

post of Class-IV employee in the school of the petitioner-management and not in the hostel or mess. Learned counsel submits that since the date of confirmation of his services, the respondent-employee was discharging his duty but all of a sudden his salary was reduced to 25% at the time of spread of COVID 19 Pandemic. Learned counsel submits that the aforesaid action of the petitioner-management was assailed by the respondent No.1 before the Tribunal by way of filing an application. Learned counsel submits that when notices were issued by the Tribunal to the petitioner-management, then in counter-blast to those proceedings, a decision was taken by them to discontinue the services of the respondent No.1. Learned counsel submits that while passing the order impugned, the petitioner-management has failed to comply with the mandatory provisions, contained under Section 18 of the Act of 1989 and this fact was well appreciated by the Tribunal, while passing the order impugned. Learned counsel submits that a reasoned and speaking order has been passed by the Tribunal, which requires no interference of this Court.

6. In support of his contentions, counsel has placed reliance upon the judgments passed by the Hon'ble Apex Court in the case of **Gajanand Sharma Versus Adarsh Siksha Parisad Samiti** reported in **AIR 2023 SC 539** and by this Court in the case of **Army Public School, Nasirabad Versus Arvind Bhandari**, while deciding **S.B. Civil Writ Petition No.17565/2022** on 14.02.2025. Learned counsel submits that, under these circumstances, the writ petition filed by the petitioner-management is liable to be rejected.

7. Learned counsel for the respondent-State opposed the arguments raised by the counsel for the petitioner and submitted that since there is no direction against the State i.e., Director, Secondary Education, hence, no arguments are required to be made on behalf of the respondent No.2.

8. Heard and considered the submissions made at Bar and perused the material available on the record.

9. Perusal of the impugned order dated 27.09.2023 indicates that the respondent No.1 had approached the Tribunal against the order dated 08.03.2021 by which his services were terminated by the petitioner-institution.

10. The Tribunal quashed the termination order dated 08.03.2021, holding that the same was passed without making compliance of the mandatory provisions, contained under Section 18 of the Act of 1989 and Rule 39 of the Rules of 1993 and a direction has been issued to the petitioner to reinstate him in service with all consequential benefits.

11. Before proceeding further to decide the issue "whether the provisions under Section 18(iii) of the Act of 1989 and Rule 39(2) (h)(iii) of the Rules of 1993 were followed by the petitioner-management or not", it would be gainful to quote the relevant provisions hereunder, as follows:-

"Section 18 of the Act of 1989.

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:

- (i) xxxxxxxxxxxxx
- (ii) xxxxxxxxxxxxx

(iii) Where the managing committee is of unanimous opinion that the services of an employee can not 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 39 of the Rules of 1993.

Removal or Dismissal from Service-

- (1)xxxxxxxxxxxx

(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) to (g)xxxxxxxx

(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:-

- (I) xxxxxxxxxxxxx
- (ii) xxxxxxxxxxxxx

(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 service 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.."

12. Perusal of Section 18 (iii) of the Act of 1989 and Rule 39(2) (h)(iii) of the Rules of 1993 clearly indicates that before removal of an employee, the managing committee is supposed to give six months notice or salary in lieu thereof to the employee and the consent of the Director of Education is required to be obtained in writing.

13. It is the case of the petitioner that the posts held by the respondents were abolished, hence, the provisions contained under Section 18 of the Act of 1989 and Rule 39 of the Rules of 1993 were not applicable. The case of the petitioner is that the respondents were appointed in the hostel mess facility and during the time of COVID 19 Pandemic when the students left the hostel, a decision was taken to close the hostel and mess facilities, and the post of Class-IV employee, held by the respondent No.1, was abolished. Accordingly, the judgment passed in the case of **S.S. Jain Subhodh Shiksha Samiti** (supra) is not applicable in the facts of this case.

14. Now the question which remains for consideration of this Court is that "Whether the posts held by the respondents in the hostel mess of the petitioner-management were abolished?"

15. Perusal of the record indicates that the respondent No.1 was appointed on temporary basis as Class-IV employee in the petitioner-management and his appointment was not specific to work in the hostel or mess facility. After serving the petitioner-management for a long time the respondent No.1 raised a demand for regularization of his service but when no heed was paid to such demand, thus, he approached the Tribunal by way of filing

the aforesaid application and the said application was partly allowed and the Tribunal vide order dated 03.08.1995 directed the petitioner-management to regularise the services of the respondent No.1.

16. The services of the respondent No.1 were regularized and confirmed w.e.f. 01.01.1997 on the post of Class-IV employee in the petitioner-school i.e., Bharatiya Vidya Bhavan Vidyashram vide order dated 25.08.1999. Thereafter, they worked in the petitioner-management till passing of the order dated 08.03.2021.

17. The services of the respondents were taken in hostel and mess facility in the petitioner's school on the post of Class-IV employees. It appears that due to spread of COVID 19 Pandemic, the students left the hostel and went to their home, thereafter a decision was taken to reduce 25% salary of the respondent No.1. The aforesaid action of the petitioner-Management was assailed by the respondent No.1 before the Tribunal by way of filing application wherein notice was issued to the petitioner-management.

18. Thereafter, a meeting was called by the committee of the petitioner-management wherein different agendas were discussed and decision was taken on such agendas. Agenda No.2 was discussed in the meetings dated 5th and 11th September, 2020 and the following decision was taken:-

"Agenda Item No.2 Review & Requirement of Staff. The Committee discussed requirement of the staff & following were decided:-

"(a) **Students' Mess.** Due to the prevailing situation the residential students are not likely to join the residential hostel & boarding fee is also not likely to realise for the present academic session. Therefore the committee decided to closed down the students mess with immediate effect. If require, the operations be off loaded to the contractor under strict supervision of the principal/Administrative officer so that quality & quantity can be ensured.

(b) **Students' Mess Staff.** As operation of the hostel mess is closed down with immediate effect, all staff i.e. mess in-charge, Cooks & helpers are to be relieved immediately by giving three months salary in lieu of three months notice period. All other dues i.e. gratuity, leave encashment, arrears of Vith pay commission are to be paid. The staff who are provided with accommodation with in the campus are to be given one month time to vacate the accommodation. The list of Mess staff, who are to be relieved is enclosed at enclosure I.

(c) **Hostel Staff.** Salary of Hostel Warden; one each for boys & girls house, Matron, Nurse and Malis is to be reduced by 50%. A written consent to be obtained from the concerned staff.

(d) xxx xxx xxx.

(e) xxx xxx xxx.

(f) xxx xxx xxx."

19. Thereafter, the hostel mess was closed vide order dated 22.09.2020 tills further orders. However, the respondent No.1 was relieved by the petitioner by paying three months salary in lieu of the three months notice period.

20. Perusal of the aforesaid proceedings of the petitioner-management nowhere indicates that the post held by the respondent No.1 was abolished. Looking to the spread of COVID-19 Pandemic and looking to the fact that the students left the hostel, a decision was taken to close the hostel and mess and the staff posted there was relieved. A decision of closure of hostel

mess by the petitioner-management does not amount to abolition of the post held by the respondent No.1.

It is worthwhile to mention here that perusal of the regularization/appointment order of the respondents indicates that he was appointed as Class-IV employees in the petitioner-school and not in the hostel mess. It appears that for managing the affairs of the hostel & mess facility, the services of the respondents were taken and they were relieved vide impugned order dated 08.03.2021. Even, the impugned order dated 08.03.2021 is silent in this regard that due to abolition of the post held by the respondents, they were relieved from the post of Class-IV employees.

Hence, it is clear that the petitioner-management has relieved the respondents in order to discontinue their services on the post of Class-IV employee. Such an order passed by the petitioner-management amounts to removal/dismissal of the respondents and the provisions contained under Section 18 of the Act of 1989 and Rule 39 of the Rules of 1993 were not followed before passing the order dated 08.03.2021.

21. Now the next issue for consideration of this Court is that "whether approval of the Director, Education Department was required under Section 18 of the Act of 1989 and Rule 39 of the Rules of 1993 before passing the order dated 08.03.2021 or not?

22. The Hon'ble Apex Court in the case of **Raj Kumar vs. Director of Education** reported in **(2016) 6 SCC 541**, while dealing with pari materia provision under Section 8 of the Delhi School Education Act, 1973 (for short "DSE Act"), and after

considering the judgment of the Hon'ble Supreme Court rendered in the case of **TMA Pai Foundation v. State of Karnataka** reported in **(2002) 8 SCC 481**, held that in case of a recognized institution, before terminating the services of an employee, prior approval of the Director of Education is required. It is worthy to note here that the judgment in the case of **Raj Kumar v. Director of Education** (supra) was considered by the Hon'ble Apex Court in the case of **Marwari Balika Vidyalaya vs. Asha Srivastava** reported in **(2020) 14 SCC 449**, and the scope and object of Section 8 of DSE Act were discussed in paras 13 and 14 as under :-

"13. In Raj Kumar v. Director of Education and Ors. (supra) this Court held that Section 8(2) of the Delhi School Education Act, 1973 is a procedural safeguard in favour of employee to ensure that order of termination or dismissal is not passed without prior approval of Director of Education to avoid arbitrary or unreasonable termination/dismissal of employee of even recognised private school. Moreover, this Court also considered the Objects and Reasons of the Delhi School Education Act, 1973 and came to the conclusion that the termination of service of the driver of a private school without obtaining prior approval of Director of Education was bad in law. This Court observed:

45. We are unable to agree with the contention advanced by the learned Counsel appearing on behalf of the Respondent School. Section 8(2) of the DSE Act is a procedural safeguard in favour of an employee to ensure that order of termination or dismissal is not passed without the prior approval of the Director of Education. This is to avoid arbitrary or unreasonable termination or dismissal of an employee of a recognised private school.

14. This Court has laid down in Raj Kumar v. Director of Education and Ors. (supra) that the intent of the

legislature while enacting the Delhi School Education Act, 1973 (in short, 'the DSE') was to provide security of tenure to the employees of the school and to regulate the terms and conditions of their employment. While the functioning of both aided and unaided educational institutions must be free from unnecessary Governmental interference, the same needs to be reconciled with the conditions of employment of the employees of these institutions and provision of adequate precautions to safeguard their interests. Section 8(2) of the DSE Act is one such precautionary safeguard which needs to be followed to ensure that employees of educational institutions do not suffer unfair treatment at the hands of the management."

23. The Division Bench of this Court in the case of **Adarsh Shiksha Parishad Samiti & Anr. Vs. Gajanand Sharma & Ors.** while deciding **D.B. Special Appeal Writ No.1077/2005** on 06.05.2022 held that prior approval of the Director, Department of Education is not required before taking disciplinary action against the employee of unaided recognised educational institutions and it has been held as under:-

"Hence, in view of the Constitutional Bench of 11 Judges of Hon'ble Supreme Court in the case of T.M.A. Pai Foundation (supra) and Larger Bench of three Judges of this Court in the case of Central Academy Society (supra), it is clear that the first proviso to section 18 of the Act of 1989 would not apply in the disciplinary action taken by the Unaided Private Educational Institutions and prior consent/ approval of the Director, Education is not required before passing the order of removal/dismissal.

The two Judges judgment of the Hon'ble Apex Court relied by the counsel for the respondent in the case of Raj Kumar (supra) is not applicable under the facts of this case. Because in the case of Raj Kumar (supra), the judgment of 11 Judges Constitutional Bench in the case of T.M.A. Pai Foundation (supra) was not brought into the notice of the Hon'ble Supreme Court.

In the case of Central Board of Dawoodi Bohara Community and Another Vs. State of Maharashtra & Anr., reported in (2005) 2 SCC 673, the Hon'ble Apex Court has held in para 12 as under:- "12. Having carefully considered the submissions made by the learned senior counsel for the parties and having examined the law laid down by the Constitution Benches in the abovesaid decisions, we would like to sum up the legal position in the following terms :-

(1) The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or co-equal strength.

(2) A Bench of lesser quorum cannot doubt the correctness of the view of the law taken by a Bench of larger quorum. In case of doubt all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration. It will be open only for a Bench of co- equal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of co- equal strength, whereupon the matter may be placed for hearing before a Bench consisting of a quorum larger than the one which pronounced the decision laying down the law the correctness of which is doubted.

(3) The above rules are subject to two exceptions :

(i) The abovesaid rules do not bind the discretion of the Chief Justice in whom vests the power of framing the roster and who can direct any particular matter to be placed for hearing before any particular Bench of any strength; and

(ii) In spite of the rules laid down hereinabove, if the matter has already come up for hearing before a Bench of larger quorum and that Bench itself feels that the view of the law taken by a Bench of lesser quorum, which view is in doubt, needs correction or reconsideration then by way of exception (and not as a rule) and for reasons it may proceed to hear the case and examine the correctness of the previous decision in question dispensing with the need of a specific reference or the order of Chief Justice constituting the Bench and such listing. Such was the situation in Raghbir Singh & Ors. and Hansoli Devi."

In the case of Sundeep Kumar Bafana Vs. State of Maharashtra & Anr., reported in (2014) 16 SCC 623, the Hon'ble Apex Court has held in para 19 as under:-

"19. It cannot be over-emphasised that the discipline demanded by a precedent or the disqualification or diminution of a decision on the application of the per incuriam rule is of great importance, since without it, certainty of law, consistency of rulings and comity of Courts would become a costly casualty. A decision or judgment can be per incuriam any provision in a statute, rule or regulation, which was not brought to the notice of the Court. A decision or judgment can also be per incuriam if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a Co-equal or Larger Bench; or if the decision of a High Court is not in consonance with the views of this Court. It must immediately be clarified that the per incuriam rule is strictly and correctly applicable to the ratio decidendi and not to obiter dicta. It is often encountered in High Courts that two or more mutually irreconcilable decisions of the Supreme Court are cited at the Bar. We think that the inviolable recourse is to apply the earliest view as the succeeding ones would fall in the category of per incuriam."

The Hon'ble Supreme Court in the case of State of Bihar and Others Vs. Bihar Secondary Teachers Struggle Committee, Munger & Ors., reported in (2019) 18 SCC 301 has held in para 116, 117, 118, 119 as under:-

"116. As rightly held by brother Lalit J., the issue involved in these appeals is answered by two decisions of the Constitution Bench of this Court, namely, State of Punjab vs. Joginder Singh and Zabar Singh Vs State of Haryana.

117. In my view also, the issue, which is subject-matter of these appeals, has to be decided keeping in view the law laid down by this Court in the aforementioned two decisions of the Constitution Bench.

118. I may, at this stage, refer to a decision in N.Meera Rani vs. State of T.N. In this case, it was argued that the question involved in the appeal is governed by the decision of the Constitution Bench in Rameshwar Shaw vs. District Magistrate, Burdwan. It is pertinent to mention that the same question was also

decided by this Court but it was decided subsequent to the decision of the Constitution Bench in many other cases. The later decisions on the same question were, however, rendered by the Benches comprised of lesser number of the Judges.

119. J.S. Verma, J. (as His lordship then was), speaking for Three Judge Bench, held that the question involved in the appeal before them has to be, therefore, decided in the light of law laid down by the Constitution Bench because firstly, it is a decision rendered by the Constitution Bench; Secondly, it is prior in point of time; and thirdly, the law laid down in later decisions has to be read in the light of the law laid down by the Constitution Bench. This is what His Lordship said in para 13 (Meera Rani case SCC p.429):

"13. We may now refer to the decisions on the basis of which this point is to be decided. The starting point is the decision of a Constitution Bench in Rameshwar Shaw v. District Magistrate, Burdwan. All subsequent decisions which are cited have to be read in the light of this Constitution Bench decision since they are decisions by Benches comprising of lesser number of Judges. It is obvious that none of these subsequent decisions could have intended taking a view contrary to that of the Constitution Bench in Rameshwar Shaw case."

The Hon'ble Apex Court in the case of Official Liquidator Vs. Dayanand, reported in 2008 (10) SCC 1 has held in para 90 as under:-

"90. We are distressed to note that despite several pronouncements on the subject, there is substantial increase in the number of cases involving violation of the basics of judicial discipline. The learned Single Judges and Benches of the High Courts refuse to follow and accept the verdict and law laid down by coordinate and even larger Benches by citing minor difference in the facts as the ground for doing so. Therefore, it has become necessary to reiterate that disrespect to constitutional ethos and breach of discipline have grave impact on the credibility of judicial institution and encourages chance litigation. It must be remembered that predictability and certainty is an important hallmark of judicial jurisprudence developed in this country in last six decades and increase in the frequency of conflicting judgments of the superior judiciary will do incalculable harm to the

system inasmuch as the courts at the grass root will not be able to decide as to which of the judgment lay down the correct law and which one should be followed.

Hence, in view of the judgment of the Hon'ble Apex Court, we see no reason to take a different view as the controversy involved in this appeal has already been put to rest by the Constitutional Bench of 11 Judges of the Hon'ble Court in the case of T.M.A. Pai Foundation (supra) and the three Judges Larger Bench of this Court in the case of Central Academy Society (supra), that prior approval of the Director of Education is not necessary before taking disciplinary action against the employee of the Unaided Recognized Educational Institution.

The provisions contained under proviso (iii) of section 18 of the Act of 1989 are not attracted in this case. Hence, the findings recorded by the learned Single Judge on this point is not sustainable.

In view of the above discussion, the impugned judgment dated 16.09.2005 passed by the Single Judge as well as the impugned judgment dated 16.08.2003 passed by the Tribunal is quashed and set aside and the impugned termination order dated 06.08.1998 is upheld."

24. The above judgment dated 06.05.2022 passed by the Division Bench of this Court in the case of **Adarsh Shiksha Parishad Samiti** (supra) was assailed by the respondent **Gajanand Sharma** before the Hon'ble Apex Court by filing **Civil Appeal No.100-101/2023 (SLP (C) NO.12645-12646 of 2022) Gajanand Sharma Versus Adarsh Shiksha Parishad Samiti & Others** (reported in **2023 SCC OnLine SC 54**) and the same was allowed by the Hon'ble Apex Court on 19.01.2023 and the judgment dated 06.05.2022 was quashed and set-aside with the following observations in para 14 to 24 which are reproduced as under:-

"14. At the outset, it is required to be noted that and it is an admitted position that parties are governed by the Rajasthan Non-Governmental Educational Institutions Act, 1989. Section 18 provides that no employee of a recognized 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 and that no final order in this regard shall be passed unless prior approval of the Director of Education or an officer authorized by him in this behalf has been obtained. The learned Tribunal set aside the order of termination on non-compliance of Section 18 of the Act, 1989 inasmuch as before terminating the services of the appellant - employee prior approval of the Director of Education was not obtained. The same came to be confirmed by the learned Single Judge, however, by the impugned judgment and order taking a contrary view, the Division Bench of the High Court has allowed the appeal and has restored the order of termination.

15. From the impugned judgment and order passed by the High Court, it appears that before the High Court the decision of this Court in the case of Raj Kumar (supra) taking a contrary view and taking the view that before terminating the services of an employee of a recognized institution prior approval of the Director of Education is required was pressed into service. However, though impermissible the Division Bench of the High Court has not followed the said binding decision by observing that in the case of Raj Kumar (supra), this Court had not considered the decision of this Court in the case of T.M.A. Pai Foundation (supra). Apart from the fact that the same is wholly impermissible for the High Court even the said observations are factually incorrect. If the decision in the case of Raj Kumar (supra) is seen in more than 8-9 paragraphs, this Court had referred to and as such dealt with the decision of this Court in the case of T.M.A. Pai Foundation (supra). Even the decision in the case of T.M.A. Pai Foundation (supra) was explained and considered by this Court in the case of Raj Kumar (supra). Therefore, the Division Bench of the High Court is factually incorrect in observing that while deciding the decision in the case of Raj Kumar (supra) this Court had not considered the decision of this Court in the case of T.M.A. Pai Foundation (supra). Before commenting upon

the decision of this Court in the case of Raj Kumar (supra) the Division Bench of the High Court ought to have thoroughly read and/or considered the decision in the case of Raj Kumar (supra). Even after making the incorrect observations that in the case of Raj Kumar (supra) this Court had not considered the decision of this Court in the case of T.M.A. Pai Foundation (supra) the Division Bench of the High Court has considered few decisions of judicial discipline which were not applicable at all. Judicial discipline also requires that the judgment/decision of this Court should be considered and read thoroughly. As observed hereinabove, the decision of this Court in the case of Raj Kumar (supra) was binding upon the High Court. Therefore, the Division Bench of the High Court has seriously erred in not following the decision of this Court in the case of Raj Kumar (supra).

16. Now so far as the decision of this Court in the case of Raj Kumar (supra) is concerned, this Court was considering pari materia provisions under the DSE Act. This Court was considering Section 8 of the DSE Act, which reads as under:—

“8.(2) Subject to any rule that may be made in this behalf, no employee of a recognised private school shall be dismissed, removed or reduced in rank nor shall his service be otherwise terminated except with the prior approval of the Director.”

17. Similar is the provision so far as Section 18 of the Act, 1989 is concerned which reads as under:—

“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.”

18. In the case of Raj Kumar (supra) while dealing with the pari materia provision under the DSE Act and after

considering the decision of this Court in the case of T.M.A. Pai Foundation (supra), it is specifically observed and held by this Court that in case of a recognized institution, before terminating the services of an employee, prior approval of the Director of Education is required. Therefore, a contrary view taken by the Larger Bench of the High Court relied upon by the Division Bench of the High Court is not a good law. It is required to be noted that the decision of this Court in the case of Raj Kumar (supra) has been considered by this Court in the case of Marwari Balika Vidyalaya (supra) and also by the Delhi High Court in the case of Mangal Sain Jain (supra). In the case of Marwari Balika Vidyalaya (supra) this Court considered the decision in the case of Raj Kumar (supra) and object and purpose of Section 8 of DSE Act in paragraphs 13 and 14 as under:—

“13. In Raj Kumar v. Director of Education [Raj Kumar v. Director of Education, (2016) 6 SCC 541 : (2016) 2 SCC (L&S) 111] this Court held that Section 8(2) of the Delhi School Education Act, 1973 is a procedural safeguard in favour of employee to ensure that order of termination or dismissal is not passed without prior approval of Director of Education to avoid arbitrary or unreasonable termination/dismissal of employee of even recognised private school. Moreover, this Court also considered the Objects and Reasons of the Delhi School Education Act, 1973 and came to the conclusion that the termination of service of the driver of a private school without obtaining prior approval of Director of Education was bad in law. This Court observed : (SCC p. 560, para 45)

“45. We are unable to agree with the contention advanced by the learned counsel appearing on behalf of the respondent school. Section 8(2) of the DSE Act is a procedural safeguard in favour of an employee to ensure that order of termination or dismissal is not passed without the prior approval of the Director of Education. This is to avoid arbitrary or unreasonable termination or dismissal of an employee of a recognised private school.”

14. This Court has laid down in Raj Kumar v. Director of Education [Raj Kumar v. Director of Education, (2016) 6 SCC 541 : (2016) 2 SCC (L&S) 111] that the intent of the legislature while enacting the Delhi School Education Act, 1973 (in short “the DSE Act”) was to provide security of

tenure to the employees of the school and to regulate the terms and conditions of their employment. While the functioning of both aided and unaided educational institutions must be free from unnecessary governmental interference, the same needs to be reconciled with the conditions of employment of the employees of these institutions and provision of adequate precautions to safeguard their interests. Section 8(2) of the DSE Act is one such precautionary safeguard which needs to be followed to ensure that employees of educational institutions do not suffer unfair treatment at the hands of the management.”

19. Even on fair reading of Section 18 of the Act, 1989, we are of the opinion that in case of termination of an employee of a recognized institution prior approval of the Director of Education or an officer authorised by him in this behalf has to be obtained. In Section 18, there is no distinction between the termination, removal, or reduction in rank after the disciplinary proceedings/enquiry or even without disciplinary proceedings/enquiry. As per the settled position of law the provisions of the statute are to be read as they are. Nothing to be added and or taken away. The words used are “no employee of a recognized institution shall be removed without holding any enquiry and it further provides that no final order in this regard shall be passed unless prior approval of the Director of Education has been obtained.” The first part of Section 18 is to be read along with first proviso. Under the circumstances, taking a contrary view that in case of dismissal/removal of an employee of a recognized institution which is after holding the departmental enquiry the prior approval of the Director of Education is not required is unsustainable and to that extent the judgment of the Larger Bench of the Rajasthan High Court in the case of Central Academy Society (supra) is not a good law.

20. Therefore, on true interpretation of Section 18 of the Act, 1989, it is specifically observed and held that even in case of termination/removal of an employee of a recognized institution after holding departmental enquiry/proceedings prior approval of the Director of Education has to be obtained as per first proviso to Section 18 of the Act, 1989.

21. In view of the above and for the reasons stated hereinabove, the impugned judgment and order passed by the Division Bench of the High Court restoring the order of termination which as such was without obtaining the prior approval of the Director of Education deserves to be quashed and set aside and is accordingly quashed and set aside. The order of learned Tribunal setting aside the order of termination confirmed by the learned Single Judge is hereby restored. Consequently, the appellant shall have to be reinstated in service and considering the fact that the respondent(s) is/are un-aided institution and the order of termination was passed as far as back in the year 1998, we direct that the appellant shall be entitled to 50% of the back wages, however, he shall be entitled to all other benefits notionally including the seniority etc., if any.

22. Civil appeal No. 100/2023 arising out of the impugned judgment and order passed in D.B. Special Appeal Writ No. 1077/2005 is hereby allowed according to the aforesaid extent.

23. Now so far as Civil Appeal No. 101/2023 arising out of the impugned judgment and order passed in D.B. Special Appeal Writ No. 826/2011 is concerned, the Division Bench of the High Court has not at all dealt with the said appeal on merits while upholding the order of termination. Therefore, we set aside the order passed by the High Court in D.B. Special Appeal Writ No. 826/2011 and remand the matter to the High Court to decide the same afresh in accordance with law and on its own merits.

24. Both the appeals are accordingly allowed to the aforesaid extent and in terms of the above. In the facts and circumstances of the case there shall be no order as to costs."

25. The judgment passed by the Larger Bench of this Court in the case of **Central Academy Society Versus Rajasthan Non-Government Educational Institutions Tribunal Jaipur & Ors.** reported in **2010 SCC ONLINE Raj. 2382** was not held to be a

good law by the Hon'ble Apex Court in the case of **Gajanand Sharma** (supra).

26. Hence, after the decision of **Gajanand Sharma** (supra) the position of law is clear that an order of termination/ removal of any employee of a recognized institution can be passed only after holding departmental enquiry/ proceedings and with prior permission of Director of Education, as per the provisions of Section 18 of the Act of 1989 and no contrary view has been taken in this regard. Thus, the recent view is against the petitioner-management.

27. Here, it is clear from the authoritative pronouncement of the judgments of the Hon'ble Apex Court in the above series of cases, that in case of termination of an employee of a recognized institution, prior approval of the Director of Education or an officer authorised by him, has to be obtained. As per the settled position of law, the provisions of the statute are to be read as they are. Nothing is required to be added or taken away. Here in the instant case, it is clear that consent of the Director of Education or the person authorised on his behalf, was not taken at the time of passing of the termination/order of removal. Hence, the Tribunal has not committed any error in quashing the termination order of the respondent.

28. Now the next question which emerges for consideration is that "whether the respondents are entitled to get 50% back-wages for the period wherein they have not worked with the petitioner-management?"

29. In several cases, the Hon'ble Apex Court has held that payment of back wages is a discretionary power which has to be exercised by the court, keeping in view the facts in entirety, for which neither straitjacket formula can be evolved nor a Rule of universal application can be laid down in such cases. Thus, reinstatement does not necessarily result in payment of back wages which would be independent of reinstatement. While dealing with the prayer of back wages, factual scenario and the principles of justice, equity and good conscience have to be kept in mind by the appropriate court.

30. **In C.N. Malla v. State of Jammu and Kashmir and Ors.** reported in **(2009) 9 SCC 597**, the Hon'ble Apex Court has held as under:

“11. The legal position is fairly settled by a catena of decisions that direction to pay back wages in its entirety is not automatic consequent upon declaration of dismissal order bad in law. The concept of discretion is inbuilt in such exercise. The court is required to exercise discretion reasonably and judiciously keeping in view the facts and circumstances of the case. Each case, of course, would depend on its own facts.”

31. Similar view has been taken by the Hon'ble Supreme Court in the case of **Mulin Sharma Vs. State of Assam and Ors.** reported in **2016(14) SCC 208** and it has been held in Para 9 & 10 as under:-

“9. We are fully satisfied that in the facts and circumstances of the case, back wages should not have been awarded to the Appellant herein. In several cases, this Court has held that payment of back wages is a discretionary power which has to be exercised by a court keeping in view the facts in their entirety and neither straitjacket formula can be evolved nor a Rule of

universal application can be laid down in such cases. Thus, reinstatement does not necessarily result in payment of back wages which would be independent of reinstatement. While dealing with the prayer of back wages, factual scenario and the principles of justice, equity and good conscience have to be kept in view by an appropriate court."

32. Though it is the case of the respondents-employees that they joined their services in petitioner-school, but they were not allowed to work. Be that as it may, they have not produced any material on the record that they remained unemployed during the period of their termination from service, hence, no case is made out for grant of 50% back-wages to them for the aforesaid period i.e. from the date of termination of service till their joining.

33. The principle and theory of 'No work no pay' is applicable to the facts and circumstances of the present case. Hence, the direction issued by the Tribunal for payment of 50% pay is not tenable in the eyes of law and is liable to be quashed and set-aside. The respondents would be entitled for actual monetary benefits with effect from the date of joining their services and they would be entitled for notional benefits, as if their services were not terminated and they would further be entitled for consequential benefits with effect from the date of order passed by the Tribunal.

34. In view of the discussions made hereinabove, the petitioner-management is directed to reinstate the respondents in service on the post held by them, at the time of their termination, with continuity in service and all other consequential benefits excluding payment of 50% back-wages. The respondents would be entitled

to get actual monetary benefits with effect from the date of their joining in services.

35. With the aforesaid observations and directions, all the writ petition stand disposed of and the impugned orders passed by the Tribunal stand modified. Stay applications as well as all applications (pending, if any) stand disposed of.

(ANOOP KUMAR DHAND),J

Karan/