

CORRECTED

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4806 OF 2019

[Arising out of SLP (C) NO. 11712 of 2017]

Khetri Vikas Samiti

.. Appellant

Versus

Director College Education,
Government of Rajasthan & Ors.

.. Respondents

WITH

Civil Appeal No.4808 of 2019 @ SLP (C) No. 12240 of 2017,
Civil Appeal No.4807 of 2019 @ SLP (C) No. 12066 of 2017 &
Civil Appeal No.4809 of 2019 @ SLP (C) No. 12102 of 2017

J U D G M E N T

M. R. Shah, J.

1. Leave granted in all the Special Leave Petitions.
2. As common question of law and facts arise in this group of appeals and, as such, they arise out of the impugned common judgment and order passed by the High Court, all these appeals

are being decided and disposed of by this common judgment and order.

3. Feeling aggrieved and dissatisfied with the impugned common judgment and order dated 15.12.2016 passed by the Division Bench of the High Court of Judicature at Rajasthan, Bench at Jaipur in D.B. Special Appeal Writ No. 735/2005, 764/2005, 807/2005 and 808/2005 by which the High Court has dismissed the said appeals preferred by the appellant herein and has confirmed the common judgment and order passed by the learned Single Judge of the High Court dismissing the respective writ petitions and confirming the order passed by the learned Non-Government Educational Institutions Tribunal, Jaipur directing the appellant to reinstate the private respondents herein, original appellant-writ petitioner-Khetri Vikas Samiti has preferred the present appeals.

4. For the sake of convenience, the facts of Civil Appeal arising out of SLP (C) No. 11712 of 2017, arising out of the impugned judgment and order passed by the Division Bench of the High Court in Special Appeal Writ No. 808/2005 are considered, which in nutshell are as under:

That the appellant herein-original writ petitioner is a society registered under the Rajasthan Societies Registration Act, 1958 which is running several educational institutions, including one Vinodini P.G. College, a non-Governmental Educational Institution. That the private respondent herein was engaged as a Lab Assistant/Lab Boy on 01.04.1999 in the aforesaid non-Government College of the appellant on a purely temporary basis. Similarly, other private respondents in the connected matters were engaged as Sweeper, Mechanic and Waterman respectively. That on 20.07.2003, the Managing Committee of the appellant, after considering the fact that the institution was running in heavy losses, unanimously resolved to abolish the posts of Lab Assistant/Lab Boy, Sweeper, Waterman and Mechanic. It was also decided that the institution will pay salary of six months which will be deposited in the bank accounts of those employees. That, in view of the abolition of the posts, vide order dated 29.07.2003, the respondent was removed from his post. Similar orders were passed for other six employees as per the resolution of the Management Committee. The respective employees were also paid the six months salary.

4.1 Aggrieved by the order dated 29.07.2003, the private respondent filed an appeal before the Non-Government Educational Tribunal, Jaipur (hereinafter referred to as the 'learned Tribunal') under Section 19 of the Rajasthan Non-Government Educational Institutions Act, 1989 (hereinafter referred to as the 'Act'), being Appeal No. 56 of 2003. Other employees also preferred respective appeals before the learned Tribunal. It was the case on behalf of the respective original applicants-employees that as, before the termination, a prior approval of the Director as required under Section 18 of the Act, has not been obtained and therefore their termination is bad in law and in violation of Section 18 of the Act. On the other hand, it was the case on behalf of the Management that as the termination took place only as a result of abolition of the posts, Section 18 of the Act shall not be applicable/attracted and prior approval of the State authorities was not necessary.

4.2 That, by common judgment and order dated 07.12.2004, the learned Tribunal set aside the orders of removal of the private respondents herein-employees and directed their reinstatement holding that it was mandatory to seek the prior approval of the Director of Education before terminating the employees, as per

Section 18 of the Act, and as no such prior approval was taken, the termination of the concerned employees is bad in law. That being aggrieved by the order dated 07.12.2004 passed by the learned Tribunal, the appellant herein-original writ petitioner filed writ petitions before the High Court, which came to be dismissed by the learned Single Judge of the High Court vide common judgment and order dated 18.07.2005.

4.3 At this stage, it is required to be noted that before the High Court, vide letter dated 25.01.2005 the Office of the Commissioner, College Education, Rajasthan clarified that there was no necessity for seeking Government approval for the removal of the employees, as the posts to which they were working were not aided posts and that their appointment was not approved by the Education Department. That, on 08.04.2005, the Commissioner, College Education issued a letter calling upon the appellant and other similarly placed institutions to close the uneconomical subjects and remove their surplus employees.

4.4 By the judgment and order dated 18.07.2005, the learned Single Judge dismissed the respective writ petitions holding that it was mandatory for the Institution/Management to have obtained written prior consent/approval of the Director,

Education before removing the respondents-employees. The learned Single Judge also did not consider the communication dated 25.01.2005 of the Commissioner, College Education, Rajasthan on the ground that the said documents were not part of the record before the learned Tribunal.

4.5 Feeling aggrieved and dissatisfied with the common judgment and order passed by the learned Single Judge of the High Court dismissing the writ petitions, the appellant herein preferred the D.B. Special Appeals before the Division Bench of the High Court. By the impugned common judgment and order dated 15.12.2016, the Division Bench of the High Court has dismissed the appeals and has confirmed the common judgment and order passed by the learned Single Judge of the High Court. Feeling aggrieved and dissatisfied thereby, the Management has preferred the present appeals.

5. Shri Shubhranshu Padhi, learned Advocate has appeared on behalf of the Management; Ms. Padhmalakshmi Iyengar, learned AAG has appeared on behalf of the respondent-State authorities and Shri Ramjee Pandey, learned Advocate has appeared on behalf of the private respondents-respective employees.

5.1 Shri Padhi, learned advocate appearing on behalf the Management has vehemently submitted that, in the facts and circumstances of the case, the High Court has committed a serious error in dismissing the appeals and confirming the judgment and order passed by the learned Single Judge approving/confirming the order passed by the learned Tribunal directing the appellant to reinstate the private respondents.

5.2 It is further submitted by the learned counsel appearing on behalf of the appellant that the High Court has not properly appreciated and considered the fact that as it was a case of abolition of posts which resulted in removal of the concerned employees, Section 18 of the Act shall not be applicable/attracted at all. It is submitted that the High Court has failed to appreciate and consider the fact that Section 18 of the Act would not be attracted as no penal action had been taken against the concerned employees, as the termination took place only as a result of the abolition of posts. It is submitted by the learned counsel appearing on behalf of the appellant that as held by this Court in the case of **Shri Maheshwari Senior Higher Secondary School v. Bhikha Ram Sharma** (1996) 8 SCC 22, in case of termination of service of an employee due to abolition of

post, the question of conducting the enquiry under the Rules does not arise. It is submitted that despite the aforesaid decision was cited before the Division Bench of the High Court, the Division Bench has not at all dealt with and considered the same. It is further submitted that even the Division Bench has not at all considered the other decisions which are cited and relied upon by the counsel appearing on behalf of the appellant-Management.

5.3 It is further submitted by the learned counsel appearing on behalf of the appellant that, as such, while deciding the appeals, the Division Bench of the High Court has not at all dealt with and considered in detail the specific case on behalf of the appellant-Management that in case of abolition of post and the consequent action of removal, Section 18 of the Act shall not be applicable. It is submitted that, however, erroneously the Division Bench of the High Court has observed that no such contention was raised before the learned Tribunal or before the learned Single Judge and the same has been raised for the first time before the Division Bench. It is submitted that in fact it was the case on behalf of the Management right from the beginning and even before the learned Tribunal that, in the facts and circumstances of the case, Section 18 of the Act shall not applicable at all.

5.4 It is further submitted by the learned counsel appearing on behalf of the appellant that even the learned Single Judge committed a serious error in not considering the communications dated 25.01.2005 and 08.04.2005 received from the Office of the Commissioner, College Education, Rajasthan on the ground that the said communications were not placed before the learned Tribunal. It is submitted that naturally the aforesaid two communications could not have been produced before the learned Tribunal as the same were subsequent to the decision of the Tribunal dated 07.12.2004. It is submitted that, however, the learned Single Judge and even the Division Bench of the High Court ought to have considered the aforesaid two communications and the stand of the State Government whether in case of abolition of posts and/or the posts to which the respective workers were working were not aided posts and their appointment was not approved by the Education Department, the prior approval/approval for removal of such employees was not required.

5.5 It is further submitted by the learned counsel appearing on behalf of the appellant that the Division Bench of the High Court has not at all appreciated and/or considered the fact that neither

the learned Tribunal nor the High Court was justified in holding that the abolition of posts was erroneous and/or bad in law.

5.6 It is submitted by the learned counsel appearing on behalf of the appellant that a conscious decision was taken by the Management to abolish the respective posts as the institution was running in heavy losses. It is submitted that therefore a conscious decision was taken to abolish the temporary posts. It is submitted that merely because the Management might have received some grant from the State Government and/or some amount from the students as fees, unless and until the entire balance-sheet is considered and/or the entire financial position of the institution is considered, the learned Single Judge ought not to have held the abolition of posts as bad in law by observing that the financial conditions of the University did not warrant abolition of the posts.

5.7 It is further submitted by the learned counsel appearing on behalf of the appellant that accordingly the learned Single Judge of the High Court has committed a grave error in observing and holding that as the respective employees were paid six months' salary which was deposited in their respective bank accounts, the Management was required to follow the procedure as per Rule 39

of the Rajasthan Non-Government Educational Institutions (Recognition, Grant-In-Aid and Service Conditions etc.) Rules, 1993 (hereinafter referred to as the '1993 Rules') and it was essential for the Management to receive written consent of the Education Department. It is submitted that merely because to be on a safer side, the Management might have paid/deposited the six months' salary, the same should not go against the Management and, by that itself, Section 18 of the Act and Rule 39 of the 1993 Rules shall be made applicable. It is submitted that what is required to be considered whether in a case of abolition of posts, prior approval of the Commissioner as per Section 18 of the Act is required or not. It is submitted that therefore both, the learned Single Judge and the Division Bench of the High Court have committed a serious error in making Section 18 of the Act and/or Rule 39 of the 1993 Rules applicable to the facts of the case.

5.8 Making the above submissions, it is prayed to allow the present appeals.

6. The present appeals have been vehemently opposed by Shri Ramjee Pandey, learned counsel appearing on behalf of the respective employees. It is vehemently submitted by Shri

Pandey, learned counsel appearing on behalf of the respective employees that, as the resultant effect of abolition of posts was removal of the concerned employees from service, Section 18 of the Act would be applicable. It is submitted that therefore, as such, no error has been committed by the High Court in holding that the removal/termination was hit by Section 18 of the Act. It is further submitted that, even otherwise, on merits also, the learned Tribunal as well as the learned Single Judge have specifically observed and held that the abolition of posts was bad in law. It is submitted, therefore, once the abolition of posts was held to be bad in law, there was no further question to be considered whether prior to removal the approval/consent of the Director/State authorities is required or not.

6.1 It is further submitted that there are concurrent findings of all the Courts below on the applicability of Section 18 of the Act and, therefore, the same is not required to be interfered with by this Court.

6.2 Making the above submissions, it is prayed to dismiss the present appeals.

7. Learned AAG appearing on behalf of the State has reiterated on the communication dated 25.02.1005 and has submitted that

as the posts to which the respective employees were working were not aided posts and their appointment was not approved by the Education Department, there was no necessity for seeking Government approval for the removal of such employees.

8. Heard learned counsel appearing on behalf of the respective parties at length and perused/considered the orders passed by the learned Tribunal, learned Single Judge of the High Court as well as the impugned common judgment and order passed by the Division Bench of the High Court.

9. At the outset, it is required to be noted that all the respective employees were appointed and working on a purely temporary basis. That a conscious decision was taken by the Management to abolish the posts on which the respective employees were working, namely Lab Assistant/Lab Boy, Sweeper, Waterman and Mechanic. A conscious decision was taken by the Management to abolish the temporary post/posts in question on the ground that the institution was running in heavy losses. Consequent upon the abolition of posts, the respective employees were removed from the services. The respective employees were also paid six months' salary which was deposited in the bank accounts of the concerned employees. Learned

Tribunal as well as the learned Single Judge directed the reinstatement of the respective employees and set aside the removal on the ground inter alia that: (i) before removal the prior consent/approval of the State authorities was not taken as required under Section 18 of the Act and (ii) that the abolition of posts was bad in law. The judgment and order of the learned Tribunal as well as the learned Single Judge of the High Court have been confirmed by the Division Bench of the High Court by the impugned common judgment and order.

10. From the common judgment and order passed by the Division Bench of the High Court, it appears that the learned Division Bench has not at all given any reasons on the applicability of Section 18 of the Act in a case where the removal of the concerned employees was due to abolition of posts. In Paragraph 14, the Division Bench of the High Court has observed that no such contention was raised before the Tribunal or before the learned Single Judge and it has been raised for the first time. The aforesaid finding does not seem to be true. From the decision of the Tribunal as well as the learned Single Judge, it emerges that from the very beginning the case on behalf of the Management was that as the removal of the employees was due

to abolition of posts, Section 18 of the Act shall not be attracted. Be that as it may, we propose to consider independently the issue with respect to the applicability of Section 18 of the Act in a case where the removal was due to abolition of the posts. Therefore, the questions which are posed for consideration of this Court are whether: (i) in case of removal due to abolition of posts and more particularly when the respective employees were working on temporary basis and the posts were not approved/sanctioned and their appointments were not approved by the Education Department and the posts to which they are working were not aided posts, Section 18 of the Act would be applicable and (ii) whether the learned Tribunal and the learned Single Judge were justified in holding the abolition of posts bad in law?

11. While considering Question No. 1 referred to hereinabove, the relevant provisions of the Act and 1993 Rules are required to be referred to.

11.1 Section 18 of the Act and Rule 39 of the 1993 Rules read 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.

Provided further that this section shall not apply, -

- (i) to a person who 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 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
- (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 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:

“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 at least 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 pursued 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 -

- (i) furnish to the employee a copy of the report of the enquiry committee,
 - (ii) 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 an officer authorised by 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 -

- (i) to an employee who is removed or dismissed on the ground of conduct which led to his conviction on a criminal charge, or
- (ii) 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
- (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 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.”

11.2 On a fair reading of Section 18 of the Act and Rule 39 of the 1993 Rules, we are of the opinion that Section 18 of the Act and Rule 39 would not be applicable in case of removal of an employee due to the abolition of posts, more particularly when the post to which the employee is working was not aided and that his appointment was not approved by the Education Department. In the case of **Bhikha Rm Sharma** (supra), this Court has specifically observed and held that in case of termination of the service of the employee due to abolition of post, the question of conducting the enquiry under the Rules does not arise. Though the said decision was cited and relied upon by the counsel appearing on behalf of the appellant before the Division Bench of the High Court, the Division Bench thereafter has not at all dealt with and/or considered the same. Therefore, the learned Tribunal, learned Single Judge and learned Division Bench of the High Court have materially erred in applying Section 18 of the Act and in holding the removal of the concerned employees which as such was due to the abolition of the posts was hit by Section 18 of the Act. At this stage, it is required to be noted that even the State Government also made its stand clear before the learned

Single Judge vide letter dated 25.01.2005 which was placed before the learned Single Judge pursuant to the order passed by the High Court, in which it was specifically stated that there is no necessity for seeking Government approval for the removal of the employees, as the posts to which they were working were not aided posts and that their appointment was not approved by the Education Department. The learned Single Judge has refused to take into consideration the communication dated 25.01.2005 on the ground that the said communication was not placed before the learned Tribunal. The said communication could not have been produced before the learned Tribunal as the said communication was after the decision of the learned Tribunal. When the said communication was placed on record by way of an additional affidavit and that too pursuant to the direction issued by the learned Single Judge, the learned Single Judge ought to have considered the same. Therefore, even as per the State Government also, the prior approval of the State authorities was not required. Therefore, the impugned judgment and order passed by the Division Bench of the High Court, learned Single Judge of the High Court and the learned Tribunal holding that the removal of the concerned employees was hit by Section 18 of

the Act, cannot be sustained and the same deserves to be quashed and set aside.

12. Now, so far as question No. 2, namely whether the learned Tribunal and the learned Single Judge were justified in holding the abolition of posts bad in law is concerned, it is required to be noted that a conscious decision was taken by the Managing Committee of the institution/Management to abolish the posts as the institution/Management was facing the financial constraint and running in heavy losses. Therefore, unless and until the said decision is found to be arbitrary and/or mala fide and/or with some oblique reason, it was not open for the learned Tribunal and/or the High Court to interfere with such decision of the Management to abolish the posts. Considering the reasoning given by the High Court and the Tribunal as such there is no specific finding that the decision of the Management to abolish the posts was mala fide and/or with the oblique motive. It is required to be noted that the question before the learned Tribunal was with respect to the removal and not with respect to abolition of the posts. The decision of the Management/Managing Committee to abolish the post was not under challenge. Therefore, in absence of challenge to the decision of the Managing

Committee to abolish the posts in question, it was not open for the Tribunal and/or the High Court to hold that abolition of posts was bad in law.

12.1 Even otherwise, on merits also, the decision of the High Court in holding the abolition of posts bad in law, cannot be sustained. The learned Singh Judge of the High Court has held the abolition of posts bad in law by observing that as the institution/Management received the grant and the fees from the students, it cannot be said that the financial condition of the Management was weak which warranted abolition of posts. However, it is required to be noted that before the learned Single Judge the entire financial position/balance-sheet was not placed before the High Court. Merely some grant might have been received by the institution/Management and/or the Management might have received the fees from the students, unless and until the balance-sheet and the entire expenditure are considered, it was not open for the High Court to come to the conclusion that the financial condition was not such poor which warranted the abolition of posts. Therefore, even the reasoning given by the High Court to hold that the abolition of posts bad in law, cannot be sustained.

13. Even the observation made by the learned Single Judge that as the Management deposited six months salary, as required under Rule 39 of the 1993 Rules, it was incumbent upon the Management to follow the procedure as provided under Rule 39 of the 1993 Rules before the removal of the concerned employees. However, it is required to be noted that Rule 39 shall be applicable only in a case where an employee, other than the employee referred to in sub-section (1) is removed or dismissed from service on the ground that of insubordination, inefficiency, neglect of duty, mis-conduct or any other ground, which makes the employee unsuitable for further retention in service. On a fair reading of Rule 39, it appears that only in the aforesaid cases, the procedure provided under Rule 39 is required to be followed. Rule 39 further provides that when the Managing Committee is of the 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, Education is obtained in writing. Therefore, in case of removal of an employee due to abolition of the post, Rule 39 of the 1993 Rules shall not be applicable at all. Merely because, for

whatever reasons and may be, to be on a safer side, the management deposited six months salary, by that itself, Rule 39 of the 1993 Rules shall not be made applicable, if otherwise, the same is not applicable.

14. In view of the above and for the reasons stated above, the present appeals are allowed. The impugned common judgment and order passed by the Division Bench of the High Court dated 15.12.2016, learned Single Judge of the High Court as well as the learned Tribunal directing the appellant to reinstate the private respondents herein are quashed and set aside. No costs.

.....J.
[L. NAGESWARA RAO]

NEW DELHI,
MAY 09, 2019.

.....J.
[M. R. SHAH]

REPORTABLE

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3. Feeling aggrieved and dissatisfied with the impugned common judgment and order dated 15.12.2016 passed by the Division Bench of the High Court of Judicature at Rajasthan, Bench at Jaipur in D.B. Special Appeal Writ No. 735/2005, 764/2005, 807/2005 and 808/2005 by which the High Court has dismissed the said appeals preferred by the appellant herein and has confirmed the common judgment and order passed by the learned Single Judge of the High Court dismissing the respective writ petitions and confirming the order passed by the learned Non-Government Educational Institutions Tribunal, Jaipur directing the appellant to reinstate the private respondents herein, original appellant-writ petitioner-Khetri Vikas Samiti has preferred the present appeals.

4. For the sake of convenience, the facts of Civil Appeal arising out of SLP (C) No. 11712 of 2017, arising out of the impugned judgment and order passed by the Division Bench of the High Court in Special Appeal Writ No. 808/2005 are considered, which in nutshell are as under:

That the appellant herein-original writ petitioner is a society registered under the Rajasthan Societies Registration Act, 1958 which is running several educational institutions, including one

Vinodini P.G. College, a non-Governmental Educational Institution. That the private respondent herein was engaged as a Lab Assistant/Lab Boy on 01.04.1999 in the aforesaid non-Government College of the appellant on a purely temporary basis. Similarly, other private respondents in the connected matters were engaged as Sweeper, Mechanic and Waterman respectively. That on 20.07.2003, the Managing Committee of the appellant, after considering the fact that the institution was running in heavy losses, unanimously resolved to abolish the posts of Lab Assistant/Lab Boy, Sweeper, Waterman and Mechanic. It was also decided that the institution will pay salary of six months which will be deposited in the bank accounts of those employees. That, in view of the abolition of the posts, vide order dated 29.07.2003, the respondent was removed from his post. Similar orders were passed for other six employees as per the resolution of the Management Committee. The respective employees were also paid the six months salary.

4.1 Aggrieved by the order dated 29.07.2003, the private respondent filed an appeal before the Non-Government Educational Tribunal, Jaipur (hereinafter referred to as the 'learned Tribunal') under Section 19 of the Rajasthan Non-

Government Educational Institutions Act, 1989 (hereinafter referred to as the 'Act'), being Appeal No. 56 of 2003. Other employees also preferred respective appeals before the learned Tribunal. It was the case on behalf of the respective original applicants-employees that as, before the termination, a prior approval of the Director as required under Section 18 of the Act, has not been obtained and therefore their termination is bad in law and in violation of Section 18 of the Act. On the other hand, it was the case on behalf of the Management that as the termination took place only as a result of abolition of the posts, Section 18 of the Act shall not be applicable/attracted and prior approval of the State authorities was not necessary.

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filed writ petitions before the High Court, which came to be dismissed by the learned Single Judge of the High Court vide common judgment and order dated 18.07.2005.

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4.4 By the judgment and order dated 18.07.2005, the learned Single Judge dismissed the respective writ petitions holding that it was mandatory for the Institution/Management to have obtained written prior consent/approval of the Director, Education before removing the respondents-employees. The learned Single Judge also did not consider the communication dated 25.01.2005 of the Commissioner, College Education,

Rajasthan on the ground that the said documents were not part of the record before the learned Tribunal.

4.5 Feeling aggrieved and dissatisfied with the common judgment and order passed by the learned Single Judge of the High Court dismissing the writ petitions, the appellant herein preferred the D.B. Special Appeals before the Division Bench of the High Court. By the impugned common judgment and order dated 15.12.2016, the Division Bench of the High Court has dismissed the appeals and has confirmed the common judgment and order passed by the learned Single Judge of the High Court. Feeling aggrieved and dissatisfied thereby, the Management has preferred the present appeals.

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serious error in dismissing the appeals and confirming the judgment and order passed by the learned Single Judge approving/confirming the order passed by the learned Tribunal directing the appellant to reinstate the private respondents.

5.2 It is further submitted by the learned counsel appearing on behalf of the appellant that the High Court has not properly appreciated and considered the fact that as it was a case of abolition of posts which resulted in removal of the concerned employees, Section 18 of the Act shall not be applicable/attracted at all. It is submitted that the High Court has failed to appreciate and consider the fact that Section 18 of the Act would not be attracted as no penal action had been taken against the concerned employees, as the termination took place only as a result of the abolition of posts. It is submitted by the learned counsel appearing on behalf of the appellant that as held by this Court in the case of **Shri Maheshwari Senior Higher Secondary School v. Bhikha Ram Sharma** (1996) 8 SCC 22, in case of termination of service of an employee due to abolition of post, the question of conducting the enquiry under the Rules does not arise. It is submitted that despite the aforesaid decision was cited before the Division Bench of the High Court, the

Division Bench has not at all dealt with and considered the same. It is further submitted that even the Division Bench has not at all considered the other decisions which are cited and relied upon by the counsel appearing on behalf of the appellant-Management.

5.3 It is further submitted by the learned counsel appearing on behalf of the appellant that, as such, while deciding the appeals, the Division Bench of the High Court has not at all dealt with and considered in detail the specific case on behalf of the appellant-Management that in case of abolition of post and the consequent action of removal, Section 18 of the Act shall not be applicable. It is submitted that, however, erroneously the Division Bench of the High Court has observed that no such contention was raised before the learned Tribunal or before the learned Single Judge and the same has been raised for the first time before the Division Bench. It is submitted that in fact it was the case on behalf of the Management right from the beginning and even before the learned Tribunal that, in the facts and circumstances of the case, Section 18 of the Act shall not be applicable at all.

5.4 It is further submitted by the learned counsel appearing on behalf of the appellant that even the learned Single Judge committed a serious error in not considering the communications

dated 25.01.2005 and 08.04.2005 received from the Office of the Commissioner, College Education, Rajasthan on the ground that the said communications were not placed before the learned Tribunal. It is submitted that naturally the aforesaid two communications could not have been produced before the learned Tribunal as the same were subsequent to the decision of the Tribunal dated 07.12.2004. It is submitted that, however, the learned Single Judge and even the Division Bench of the High Court ought to have considered the aforesaid two communications and the stand of the State Government whether in case of abolition of posts and/or the posts to which the respective workers were working were not aided posts and their appointment was not approved by the Education Department, the prior approval/approval for removal of such employees was not required.

5.5 It is further submitted by the learned counsel appearing on behalf of the appellant that the Division Bench of the High Court has not at all appreciated and/or considered the fact that neither the learned Tribunal nor the High Court was justified in holding that the abolition of posts was erroneous and/or bad in law.

5.6 It is submitted by the learned counsel appearing on behalf of the appellant that a conscious decision was taken by the Management to abolish the respective posts as the institution was running in heavy losses. It is submitted that therefore a conscious decision was taken to abolish the temporary posts. It is submitted that merely because the Management might have received some grant from the State Government and/or some amount from the students as fees, unless and until the entire balance-sheet is considered and/or the entire financial position of the institution is considered, the learned Single Judge ought not to have held the abolition of posts as bad in law by observing that the financial conditions of the University did not warrant abolition of the posts.

5.7 It is further submitted by the learned counsel appearing on behalf of the appellant that accordingly the learned Single Judge of the High Court has committed a grave error in observing and holding that as the respective employees were paid six months' salary which was deposited in their respective bank accounts, the Management was required to follow the procedure as per Rule 39 of the Rajasthan Non-Government Educational Institutions (Recognition, Grant-In-Aid and Service Conditions etc.) Rules,

1993 (hereinafter referred to as the '1993 Rules') and it was essential for the Management to receive written consent of the Education Department. It is submitted that merely because to be on a safer side, the Management might have paid/deposited the six months' salary, the same should not go against the Management and, by that itself, Section 18 of the Act and Rule 39 of the 1993 Rules shall be made applicable. It is submitted that what is required to be considered whether in a case of abolition of posts, prior approval of the Commissioner as per Section 18 of the Act is required or not. It is submitted that therefore both, the learned Single Judge and the Division Bench of the High Court have committed a serious error in making Section 18 of the Act and/or Rule 39 of the 1993 Rules applicable to the facts of the case.

5.8 Making the above submissions, it is prayed to allow the present appeals.

6. The present appeals have been vehemently opposed by Shri Ramjee Pandey, learned counsel appearing on behalf of the respective employees. It is vehemently submitted by Shri Pandey, learned counsel appearing on behalf of the respective employees that, as the resultant effect of abolition of posts was

removal of the concerned employees from service, Section 18 of the Act would be applicable. It is submitted that therefore, as such, no error has been committed by the High Court in holding that the removal/termination was hit by Section 18 of the Act. It is further submitted that, even otherwise, on merits also, the learned Tribunal as well as the learned Single Judge have specifically observed and held that the abolition of posts was bad in law. It is submitted, therefore, once the abolition of posts was held to be bad in law, there was no further question to be considered whether prior to removal the approval/consent of the Director/State authorities is required or not.

6.1 It is further submitted that there are concurrent findings of all the Courts below on the applicability of Section 18 of the Act and, therefore, the same is not required to be interfered with by this Court.

6.2 Making the above submissions, it is prayed to dismiss the present appeals.

7. Learned AAG appearing on behalf of the State has reiterated on the communication dated 25.02.1005 and has submitted that as the posts to which the respective employees were working were not aided posts and their appointment was not approved by the

Education Department, there was no necessity for seeking Government approval for the removal of such employees.

8. Heard learned counsel appearing on behalf of the respective parties at length and perused/considered the orders passed by the learned Tribunal, learned Single Judge of the High Court as well as the impugned common judgment and order passed by the Division Bench of the High Court.

9. At the outset, it is required to be noted that all the respective employees were appointed and working on a purely temporary basis. That a conscious decision was taken by the Management to abolish the posts on which the respective employees were working, namely Lab Assistant/Lab Boy, Sweeper, Waterman and Mechanic. A conscious decision was taken by the Management to abolish the temporary post/posts in question on the ground that the institution was running in heavy losses. Consequent upon the abolition of posts, the respective employees were removed from the services. The respective employees were also paid six months' salary which was deposited in the bank accounts of the concerned employees. Learned Tribunal as well as the learned Single Judge directed the reinstatement of the respective employees and set aside the

removal on the ground inter alia that: (i) before removal the prior consent/approval of the State authorities was not taken as required under Section 18 of the Act and (ii) that the abolition of posts was bad in law. The judgment and order of the learned Tribunal as well as the learned Single Judge of the High Court have been confirmed by the Division Bench of the High Court by the impugned common judgment and order.

10. From the common judgment and order passed by the Division Bench of the High Court, it appears that the learned Division Bench has not at all given any reasons on the applicability of Section 18 of the Act in a case where the removal of the concerned employees was due to abolition of posts. In Paragraph 14, the Division Bench of the High Court has observed that no such contention was raised before the Tribunal or before the learned Single Judge and it has been raised for the first time. The aforesaid finding does not seem to be true. From the decision of the Tribunal as well as the learned Single Judge, it emerges that from the very beginning the case on behalf of the Management was that as the removal of the employees was due to abolition of posts, Section 18 of the Act shall not be attracted. Be that as it may, we propose to consider independently the issue

with respect to the applicability of Section 18 of the Act in a case where the removal was due to abolition of the posts. Therefore, the questions which are posed for consideration of this Court are whether: (i) in case of removal due to abolition of posts and more particularly when the respective employees were working on temporary basis and the posts were not approved/sanctioned and their appointments were not approved by the Education Department and the posts to which they are working were not aided posts, Section 18 of the Act would be applicable and (ii) whether the learned Tribunal and the learned Single Judge were justified in holding the abolition of posts bad in law?

11. While considering Question No. 1 referred to hereinabove, the relevant provisions of the Act and 1993 Rules are required to be referred to.

11.1 Section 18 of the Act and Rule 39 of the 1993 Rules read 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.

Provided further that this section shall not apply, -

- (i) to a person who 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 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
- (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 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:

“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 at least 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 pursued 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 -
 - (i) furnish to the employee a copy of the report of the enquiry committee,

- (ii) 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 an officer authorised by 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 -

- (i) to an employee who is removed or dismissed on the ground of conduct which led to his conviction on a criminal charge, or
- (ii) 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
- (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 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.”

11.2 On a fair reading of Section 18 of the Act and Rule 39 of the 1993 Rules, we are of the opinion that Section 18 of the Act and Rule 39 would not be applicable in case of removal of an employee due to the abolition of posts, more particularly when the post to which the employee is working was not aided and that his appointment was not approved by the Education Department. In the case of **Bhikha Rm Sharma** (supra), this Court has specifically observed and held that in case of termination of the service of the employee due to abolition of post, the question of conducting the enquiry under the Rules does not arise. Though the said decision was cited and relied upon by the counsel appearing on behalf of the appellant before the Division Bench of the High Court, the Division Bench thereafter has not at all dealt with and/or considered the same. Therefore, the learned Tribunal, learned Singh Judge and learned Division Bench of the High Court have materially erred in applying Section 18 of the Act and in holding the removal of the concerned employees which as such was due to the abolition of the posts was hit by Section 18 of the Act. At this stage, it is required to be noted that even the State Government also made its stand clear before the learned Single Judge vide letter dated 25.01.2005 which was placed

before the learned Single Judge pursuant to the order passed by the High Court, in which it was specifically stated that there is no necessity for seeking Government approval for the removal of the employees, as the posts to which they were working were not aided posts and that their appointment was not approved by the Education Department. The learned Single Judge has refused to take into consideration the communication dated 25.01.2005 on the ground that the said communication was not placed before the learned Tribunal. The said communication could not have been produced before the learned Tribunal as the said communication was after the decision of the learned Tribunal. When the said communication was placed on record by way of an additional affidavit and that too pursuant to the direction issued by the learned Single Judge, the learned Single Judge ought to have considered the same. Therefore, even as per the State Government also, the prior approval of the State authorities was not required. Therefore, the impugned judgment and order passed by the Division Bench of the High Court, learned Single Judge of the High Court and the learned Tribunal holding that the removal of the concerned employees was hit by Section 18 of

the Act, cannot be sustained and the same deserves to be quashed and set aside.

12. Now, so far as question No. 2, namely whether the learned Tribunal and the learned Single Judge were justified in holding the abolition of posts bad in law is concerned, it is required to be noted that a conscious decision was taken by the Managing Committee of the institution/Management to abolish the posts as the institution/Management was facing the financial constraint and running in heavy losses. Therefore, unless and until the said decision is found to be arbitrary and/or mala fide and/or with some oblique reason, it was not open for the learned Tribunal and/or the High Court to interfere with such decision of the Management to abolish the posts. Considering the reasoning given by the High Court and the Tribunal as such there is no specific finding that the decision of the Management to abolish the posts was mala fide and/or with the oblique motive. It is required to be noted that the question before the learned Tribunal was with respect to the removal and not with respect to abolition of the posts. The decision of the Management/Managing Committee to abolish the post was not under challenge. Therefore, in absence of challenge to the decision of the Managing

Committee to abolish the posts in question, it was not open for the Tribunal and/or the High Court to hold that abolition of posts was bad in law.

12.1 Even otherwise, on merits also, the decision of the High Court in holding the abolition of posts bad in law, cannot be sustained. The learned Singh Judge of the High Court has held the abolition of posts bad in law by observing that as the institution/Management received the grant and the fees from the students, it cannot be said that the financial condition of the Management was weak which warranted abolition of posts. However, it is required to be noted that before the learned Single Judge the entire financial position/balance-sheet was not placed before the High Court. Merely some grant might have been received by the institution/Management and/or the Management might have received the fees from the students, unless and until the balance-sheet and the entire expenditure are considered, it was not open for the High Court to come to the conclusion that the financial condition was not such poor which warranted the abolition of posts. Therefore, even the reasoning given by the High Court to hold that the abolition of posts bad in law, cannot be sustained.

13. Even the observation made by the learned Single Judge that as the Management deposited six months salary, as required under Rule 39 of the 1993 Rules, it was incumbent upon the Management to follow the procedure as provided under Rule 39 of the 1993 Rules before the removal of the concerned employees. However, it is required to be noted that Rule 39 shall be applicable only in a case where an employee, other than the employee referred to in sub-section (1) is removed or dismissed from service on the ground that of insubordination, inefficiency, neglect of duty, mis-conduct or any other ground, which makes the employee unsuitable for further retention in service. On a fair reading of Rule 39, it appears that only in the aforesaid cases, the procedure provided under Rule 39 is required to be followed. Rule 39 further provides that when the Managing Committee is of the 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, Education is obtained in writing. Therefore, in case of removal of an employee due to abolition of the post, Rule 39 of the 1993 Rules shall not be applicable at all. Merely because, for

whatever reasons and may be, to be on a safer side, the management deposited six months salary, by that itself, Rule 39 of the 1993 Rules shall not be made applicable, if otherwise, the same is not applicable.

14. In view of the above and for the reasons stated above, the present appeals are allowed. The impugned common judgment and order passed by the Division Bench of the High Court dated 15.12.2016, learned Single Judge of the High Court as well as the learned Tribunal directing the appellant to reinstate the private respondents herein are quashed and set aside. No costs.

.....J.
[L. NAGESWARA RAO]

NEW DELHI,
MAY 09, 2019.

.....J.
[M. R. SHAH]