

M/s. Bharatiya Vidya Bhavan's Public School Vs. M. Vimala & Ors.

Civil Appeal No. _____ /2026 arising out of SLP (C) No. 17336/2023 · Supreme Court of India · 2026-08-06 ·
Dipankar Datta · Sheel Nagu · F2J-C-1027

Full judgment text

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[Civil Appeal No. _____ /2026 arising out of SLP (C) No. 17336/2023]

Dipankar Datta, J.

1. Leave granted.

2. This appeal registers a challenge to the judgment and order dated 9th June, 2023¹ passed by a Division Bench of the High Court for the State of Telangana at Hyderabad². While dismissing an intra-court appeal³ of the appellant, the Division Bench affirmed the decision of a Single Judge allowing the writ petition⁴ of the first respondent.

3. Appellant initially appointed the first respondent as a teacher on ad hoc basis on 22nd June, 2003 till the end of the academic year 2003-04. She was re-appointed on 25th June 2004 and then again on 5th June, 2005, till the end of the academic years 2004-05 and 2005-06, respectively. Subsequently, by an order dated 25th January, 2006, the first respondent was placed on probation for a period of one year w.e.f. 1st January, 2006. The order of appointment made it clear that the first respondent shall continue to be on probation till 31st December, 2006 and her appointment will not be effective thereafter, unless a fresh order is issued extending the period of probation.

4. Correspondence was exchanged by and between the appellant and the first respondent on the point of genuineness of the certificates of qualifications submitted by the latter. Ultimately, through an order dated 7th March, 2007, the appellant informed the first respondent that she is allowed to continue as Primary Grade Teacher up to the end of the academic year 2006-2007, meaning thereby that the appellant did not require the first respondent's service thereafter. 5. Challenging the order dated 7th March, 2007, the first respondent invoked the writ jurisdiction of the High Court seeking, inter alia, the following relief:

"9. For the reasons stated above, it is prayed that this Hon'ble Court may be pleased to issue an appropriate Writ, Order or direction, preferably one in the nature of Writ of Mandamus, declaring the impugned proceedings of the 2nd respondent vide bvbsjh / hyd. No. 500 / F.No. PF60 / 2007, dated:7.3.2007 terminating the services of the petitioner as Teacher in the 2nd respondent School as arbitrary, illegal, violative of principles of natural justice and violative of Section 79 read with Section 83 of A.P. Education Act, 1982 and set aside the same and consequently direct the 2nd respondent to continue the petitioner in service as Teacher and pass such other or further orders as are necessary.

10. It is further prayed that this Hon'ble Court may be pleased to DIRECT the 2nd respondent herein to continue the petitioner herein in service as Teacher, pending disposal of the main Writ Petition and pass such other or further orders as are necessary."

6. A counter affidavit was filed by the appellant before the Single Judge. It was pleaded therein that doubt arose whether the first respondent's B. Ed. degree was recognised by the National Council for Teacher Education⁵/University Grants Commission⁶. As pleaded, no teacher education programme could have commenced in any institution without obtaining recognition from the NCTE in terms of the provisions of the National Council for Teacher Education Act, 1993⁷; that, the first respondent had secured her B.Ed. degree from Bhartiya Shiksha Parishad, Lucknow⁸ in 1997, which was not an institution having recognition of the NCTE; that, degrees relating to teachers' education obtained from an institution not recognised by the NCTE is not valid for employment; and that the list of recognised institutions released by the NCTE on its website did not include Shiksha Parishad. Enquiry made by the appellant with the UGC also revealed that Shiksha Parishad was not included in the list of recognised universities maintained by the UGC. It was, thus, informed to the first respondent by a letter dated 9th January, 2007 as follows:

"With reference to your letter dt. 23rd October 2006, I am directed to inform you that we have since received the intimation from the University Grants Commission (U.G.C) that Bharatiya Shiksha Parishad, Lucknow is not included in the list of Universities maintained by the U.G.C. We therefore regret our inability to accede to your request."

Later, by a letter dated 7th March, 2007, impugned in the writ petition, the first respondent was informed to the following effect:

"In continuation of our letter dt. 9th January 2007, I am directed to inform you that you are allowed to continue as a Primary grade Teacher up to the end of the current academic year 2006-07."

7. On behalf of the first respondent, it was contended before the Single Judge that with the expiry of one year from 1st January, 2006, the period of probation concluded and she acquired the status of a regular teacher. It was further contended that having regard to the provisions of Sections 79 and 83 of the Andhra Pradesh Education Act, 1982, termination of the first respondent's service without any enquiry was in breach of the principles of natural justice; hence, it is illegal and arbitrary. It was finally argued that approval of the competent authority did not precede the impugned order dated 7th March, 2007 and, hence, such termination was without jurisdiction.

8. The writ petition was opposed by the appellant by relying on its counter affidavit, referred to above.

9. The Single Judge proceeded to allow the writ petition vide judgment and order dated 24th July, 2008 observing, inter alia, as follows:

"Section 79 of the Act mandates that no employee in a private educational institution shall be removed or dismissed, except by conducting an enquiry and after obtaining the prior approval of the competent authority. Section 83 of the Act deals with the case of retrenchment. Here again, the prior approval of the competent authority is mandatory.

In Vasavi College of Engineering vs. A. Suryanarayana 1991 (3) ALT 335, a Division Bench of this Court took the view that prior approval of the competent authority is necessary for removal of regular or temporary employee. Even assuming that the petitioner did not become a regular employee, she deserves to be treated as a temporary employee. Though the proposed cessation of service is not on the basis of any disciplinary proceedings, it can be treated as the one under Section 83 of the Act. If the 2nd respondent wanted to remove the petitioner from service, on the ground that she does not hold the requisite qualification, he ought to have put her on notice.

Even if the 2nd respondent has nothing objectionable against the petitioner, warranting issuance of notice or conducting of domestic enquiry, the approval of the competent authority was necessary under Section 83 of the Act. On this short ground, the writ petition is allowed and the impugned order, dated 07.03.2007, is set aside. It is left open to the 2nd respondent to follow the procedure prescribed by law, before the appointment of the petitioner is discontinued. There shall be no order as to costs."

10. The judgment and order of the Single Judge having been carried in appeal. The Division Bench of the High Court, in the impugned judgment, held as follows:

"6. *** A perusal of Section 79 makes it clear that no teacher or member of the non-teaching staff employed in any private institution shall be dismissed, removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and shall be given a reasonable opportunity of being heard in respect of those charges. Admittedly, in the instant case, the appellant has discontinued the 1st respondent after continuing nearly for four years on adhoc basis. But the appellant ought to have obtained prior permission from the competent authority before discontinuing the 1st respondent. The judgments relied upon by the appellant have no application to the present case as those judgments pertain to the employees for whom there is no protection as envisaged under Sections 79 and 83 of the Act. Therefore, the learned Single Judge was justified in allowing the writ petition in favour of the 1st respondent and this Court is not inclined to entertain the writ appeal.

7. Accordingly, the Writ Appeal is dismissed. No Costs."

11. We have heard learned counsel appearing for the appellant and the first respondent at some length and considered the pleaded case of the parties before the High Court in the light of the relevant law.

12. It has not been disputed by learned counsel for the first respondent that Shiksha Parishad was neither an institution recognised by the NCTE or the UGC on the date the first respondent obtained her

B.Ed. degree. Since, however, the controversy pertains to teacher education programme, it is the NCTE Act, and not the University Grants Commission Act, 1956, that is relevant.

13. We have perused the NCTE Act. In view of the provisions of Sections 14, 16 and 17(4) of the NCTE Act, any degree pertaining to teacher's training obtained from an institution not enjoying the recognition of the NCTE has no legal effect; thus, the consequence is, no candidate can be appointed as a teacher without obtaining B.Ed. degree or any other teacher's training degree, which is an essential qualification, from an institution recognised by the NCTE. In fact, any such degree from an unrecognised institution is not worth the paper on which it is printed. Viewed in such perspective, the first respondent did not have any legal right to claim that she should have been continued on the post of a Teacher without a valid B.Ed. degree.

14. However, what seems important in the context are Sections 79 and 83 of the 1982 Act. According to the High Court, the requirements thereof were observed in the breach. To the extent relevant, Section 79 reads as follows:

79. Dismissal, removal or reduction in rank or suspension, etc., of employees of private institutions:-

(1) No teacher or member of the non-teaching staff employed in any private institution (hereinafter in this Chapter referred to as 'the employee') shall be dismissed, removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges: Provided that no order of dismissal, removal or reduction in rank shall be passed under this sub-section against an employee other than an employee of a minority educational institution without the prior approval of such authority or Officer as may be prescribed for different classes of private institutions;

Provided further that the management may prefer an appeal against any order of the Officer or authority refusing approval under this sub-section to such authority or officer and within such period as may be prescribed.

(2) ***

(3) ***

(4) ***

(5) ***

Section 83 of the 1982 Act provides as follows:

83. Retrenchment of employees:- Where retrenchment of any employee is rendered necessary by the management or competent authority consequent on any change relating to education or course of instruction or to any other matter, such retrenchment may be, effected with the prior approval of the competent authority or the next higher authority, as the case may be."

Teacher is defined in Section 2(43) of the 1982 Act as follows:

(43) "Teacher" means any member of the teaching staff in an educational institution appointed to give instruction in that institution;

15. In light of the aforesaid definition of Teacher, it matters little whether a teacher is a permanent teacher or is appointed on temporary basis. Section 79 of the 1982 Act, on its own terms, does not carve out any distinction and applies to all teachers in position in an institution. If any teacher misconducts himself/herself and he/she has to be disciplined by imposing punishment of dismissal, removal or reduction in rank, an enquiry in the manner ordained is a sine qua non. Therefore, it would indeed seem to be imperative that a teacher cannot be punished, including dismissal from service, unless an enquiry has been conducted in the manner ordained by Section 79.

16. Also, the position seems to be clear from Section 83 that no employee can be retrenched from service without the prior approval of the competent authority. Employee not being defined in the 1982 Act, it would include a teacher.

17. However, here, we are not concerned with any order punishing the first respondent. We are concerned with termination of her probationary service. Unless statutory rules or non-statutory rules/norms governing service of an employee provide to the contrary, service on probation, normally, would be guided by the terms of the offer of appointment. The first respondent was appointed on 25th

January, 2006 on probation for a year, i.e., till the end of 2006, and such period was extended till the end of the academic year 2006-07. The offer of appointment made it clear that beyond 31st December, 2006, the appointment will not be effective without a fresh order. Such offer also contained a clause to the effect that "mere completion of the probationary period or period of extension thereof would not entitle (sic, entitle) you to automatic confirmation nor will it imply confirmation".

18. It would be profitable, at this stage, to note the decision of this Court in *Dipti Prakash Banerjee v. Satyendra Nath Bose National Centre for Basic Sciences*¹⁰ where the concepts of 'motive' and 'foundation' in relation to termination of a probationer's service emerged for consideration. An instructive passage is found in paragraph 21, reading as follows:

21. If findings were arrived at in an enquiry as to misconduct, behind the back of the officer or without a regular departmental enquiry, the simple order of termination is to be treated as "founded" on the allegations and will be bad. But if the enquiry was not held, no findings were arrived at and the employer was not inclined to conduct an enquiry but, at the same time, he did not want to continue the employee against whom there were complaints, it would only be a case of motive and the order would not be bad. Similar is the position if the employer did not want to enquire into the truth of the allegations because of delay in regular departmental proceedings or he was doubtful about securing adequate evidence. In such a circumstance, the allegations would be a motive and not the foundation and the simple order of termination would be valid.

19. Since the first respondent was on probation and she came to be relieved from service by an order of discharge, which is non-stigmatic, at best lack of B. Ed. degree of the first respondent from a recognised institution can be attributed as a motive for her discharge and not the foundation therefor. We, thus, have no doubt that neither Section 79 nor Section 83 had any application on facts and in the circumstances.

20. Assuming that either Section 79 or Section 83 does have application, what would be the legal position? Let us now deal with this aspect. The question would require us to examine the effect of no enquiry being conducted by the appellant and to simultaneously consider whether, the B.Ed. degree obtained by the first respondent undoubtedly being a paper degree, the action of the appellant not to retain the first respondent in service beyond 31st March, 2007 on such ground should have been nullified by the High Court.

21. We regret, we cannot concur with the High Court having regard to absence of any dispute as to unworthiness of the B.Ed. degree obtained by the first respondent. What Section 79 postulates is an opportunity of defence to the teacher sought to be proceeded against. It has to be remembered that *audi alteram partem* is not a ritual to be followed in every case; it is flexible and not cast in a rigid mould. Its application depends on the facts and circumstances of each case.

The principles of natural justice can be invoked only in such cases where, granting an opportunity to defend the allegation could have affected the result and prevented the allegation from being proved. But where, given the attending circumstances, the allegation was bound to be proved in any event, the mere failure to grant an opportunity will not be decisive. To invalidate the final decision, the aggrieved must at least demonstrate that he/she had a defence which, if properly considered, could have led to a different outcome.

22. In the present case, even if an enquiry were conducted granting opportunity to the first respondent to defend the allegation that the B.Ed. degree obtained by her is not a valid degree and that the same has no effect in law, she could not have persuaded the enquiry officer to hold in her favour. In fine, the first respondent had not been subjected to any harm or prejudice by reason of the failure of the appellant to hold an enquiry in the manner ordained by Section 79. For the same reason, Section 83 would also not come to the aid of the first respondent.

23. We are reminded of the decision in *Chairman, Board of Mining Examination and Chief Inspector of Mines v. Ramjee*¹¹, where Hon'ble Krishna Iyer, J. pertinently observed as follows:

"13. The last violation regarded as a lethal objection is that the Board did not enquire of the respondent, independently of the one done by the Regional Inspector. Natural justice is no unruly horse, no lurking landmine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the

administrative realities and other factors of a given case, can be exasperating. We can neither be finical nor fanatical but should be flexible yet firm in this jurisdiction. No man shall be hit below the belt - that is the conscience of the matter."

(emphasis ours)

24. Reference may further be made to the decision in *Escorts Farms Ltd. v. Commissioner, Kumaon Division, Nainital, U.P.*¹², where it has been held as follows:

"64. Right of hearing to a necessary party is a valuable right. Denial of such right is serious breach of statutory procedure prescribed and violation of rules of natural justice. Rules of natural justice are to be followed for doing substantial justice and not for completing a mere ritual of hearing without possibility of any change in the decision of the case on merits. In view of the legal position explained by us above, we, therefore, refrain from remanding these cases in exercise of our discretionary powers under Article 136 of the Constitution of India."

(emphasis ours)

25. In *Viveka Nand Sethi v. Chairman, J&K Bank Ltd*¹³, this Court held as follows:

22. The principle of natural justice, it is trite, is no unruly horse. When facts are admitted, an enquiry would be an empty formality. Even the principle of estoppel will apply. [See *Gurjeewan Garewal (Dr.) v. Dr. Sumitra Dash*, (2004) 5 SCC 263. The principles of natural justice are required to be complied with having regard to the fact situation obtaining therein. It cannot be put in a straitjacket formula. It cannot be applied in a vacuum without reference to the relevant facts and circumstances of the case.

(emphasis ours)

26. The decision of this Court in *State of Uttar Pradesh v. Sudhir Kumar Singh and Ors.*¹⁴ also bears consideration where a 3-Judge Bench, after considering a catena of decisions on natural justice, crystallized principles as enumerated below:

42.1. Natural justice is a flexible tool in the hands of the judiciary to reach out in fit cases to remedy injustice. The breach of the audi alteram partem rule cannot by itself, without more, lead to the conclusion that prejudice is thereby caused.

42.2. Where procedural and/or substantive provisions of law embody the principles of natural justice, their infraction per se does not lead to invalidity of the orders passed. Here again, prejudice must be caused to the litigant, except in the case of a mandatory provision of law which is conceived not only in individual interest, but also in public interest.

42.3. No prejudice is caused to the person complaining of the breach of natural justice where such person does not dispute the case against him or it. This can happen by reason of estoppel, acquiescence, waiver and by way of non-challenge or non-denial or admission of facts, in cases in which the Court finds on facts that no real prejudice can therefore be said to have been caused to the person complaining of the breach of natural justice.

42.4. In cases where facts can be stated to be admitted or indisputable, and only one conclusion is possible, the Court does not pass futile orders of setting aside or remand when there is, in fact, no prejudice caused. This conclusion must be drawn by the Court on an appraisal of the facts of a case, and not by the authority who denies natural justice to a person.

42.5. The "prejudice" exception must be more than a mere apprehension or even a reasonable suspicion of a litigant. It should exist as a matter of fact, or be based upon a definite inference of likelihood of prejudice flowing from the non-observance of natural justice.

(emphasis ours)

27. It was faintly suggested by learned counsel for the respondent that the Shiksha Parishad has obtained the recognition of the NCTE in the year 2022.

28. We are afraid, nothing turns on the recognition granted in 2022. Such recognition cannot validate the degree obtained by the first petitioner in the last century.

29. Also, reliance has been placed by learned counsel for the first respondent on the decision of this Court in *Priyanka v. The State of Bihar*¹⁵. Paragraphs 16 and 17 of the cited decision make it clear that the facts were completely different and the conclusions drawn by this Court have no relevance insofar

as the present appeal is concerned. The Chhattisgarh Niji Kshetra Vishwavidyalaya Act, 2002¹⁶ was declared ultra vires by this Court vide order dated 11th February, 2005. Protection was granted to those students who had graduated during the time the 2002 Act was in force. We fail to appreciate as to how such decision is material for the purpose of a decision on this appeal.

30. We are, thus, unhesitatingly of the opinion that the Single Judge of the High Court was entirely wrong in allowing the writ petition of the first respondent; and the Division Bench was equally in gross error in upholding such wrong decision.

31. The impugned judgment, in which the Single Judge's order has merged, is set aside. The civil appeal stands allowed; consequently, the writ petition of the first respondent would stand dismissed.

32. Pending application(s), if any, stands disposed of.

.....J. (Dipankar Datta)

.....J. (Sheel Nagu)

New Delhi;

August 06, 2026.

1 impugned judgment

2 High Court

3 W.A. No.908 of 2008

4 W.P. No.9325 of 2007

5 NCTE

6 UGC

7 NCTE Act

8 Shiksha Parishad

9 the 1982 Act

10 (1999) 3 SCC 60

11 (1977) 2 SCC 256

12 (2004) 4 SCC 281

13 (2005) 5 SCC 337

14 (2021) 19 SCC 706

15 2026 INSC 167

16 the 2002 Act

Source disclosure: Complete sanitized public judgment text retained for research; official-primary replacement remains pending.

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