(1987) 09 RAJ CK 0032

Rajasthan High Court

Case No: Civil Rev. Petition No. 1 of 1987

Vidhya Bhawan Society and Another		APPELLANT
	Vs	
Smt. Vishwa Vijay Singh		RESPONDENT

Date of Decision: Sept. 2, 1987

Acts Referred:

- Constitution of India, 1950 - Article 12, 226, 311, 32

Citation: (1988) 1 RLW 640 : (1988) 1 WLN 600

Hon'ble Judges: Jas Raj Chopra, J

Bench: Single Bench

Judgement

J.R. Chopra, J.

This revision is directed against the appellate order of the learned Additional District Judge No 1, Udaipur dated 16-12-1986 whereby the learned lower court has accepted the appeal against the order of the learned Munsif and Judicial Magistrate, Udaipur City (North), Udaipur dated 28-10 1986 by which the learned Munsif and Judicial Magistrate dismissed the application of the plaintiff for grant of temporary injunction.

2. The facts necessary to be noticed for the disposal of this revision petition briefly stated are: that the plaintiff-non petitioner Smt. Vishwa Vijay Singh was appointed as Assistant Teacher in the year 1970 by defendant petitioner No. 1 Vidhya Bhawan Society, Fatehpura, Udaipur. She was confirmed as Assistant Teacher on 10-8-1973. However, in pursuance of the resolution on the recommendation of the Staff Selection Committee at its meeting held on 11-9-1984, she was appointed as Head Mistress of the Nursery School by the Administrator of the Vidhya Bhawan Society on a probation of one year from the date she joins. It was mentioned in the appointment order that one month''s notice will be necessary in case of termination of service from either side during probation period It was further mentioned in the order that she will be required to execute the agreement bond. It is alleged that her

period of probation was further extended for one more year with effect from 26-9-1985 vide order dated December 4, 1985 of the defendant-petitioner No. 1. The plaintiff-non-petitioner has contended that that period of probation came to end on 25-9-1986 and during this period, she worked with honesty and integrity and for improvement of the institution. As per the Rules, she I as become permanent on the expiry of this period. However, on 26-9-1986, at about 4.30 p.m. after duty hours were over, she was served with a letter that she has not been confirmed by the President of defendant-petitioner No. 1 and, therefore, she has been reverted as a Second Grade Teacher. The grade of Head Mistress is two grades up from the grade of a Second Grade Teacher. According to the plaintiff non petitioner, it is reduction in the rank and it has been done without giving her show cause notice and thus, her rights have been infringed She has further contended that the persons who have issued this order haw no authority to pass such an order. According to her, the President and Secretary of defendant-petitioner No. 1 cannot pass such an order without getting its approval from the Working Committee of the defendant-petitioner No 1 and therefore, she brought the suit for declaration that the impugned order dated 26-9-1986 is illegal and in-effective as against the rights of the plaintiff. She has also claimed perpetual injunction against the defendants not to revert her from the post of Head Mistress of the law. She Nursery School without following due and prescribed procedure of the law. She further sought a mandatory injunction that even if the defendants remove her from that post she will be put back on that post. She has further claimed that Sough the defendant petitioner No. 1 is a registered educational institute but as it is getting aid from the State Government under the Rules for Payment of Grade-m-Aid to Non-Government Educational, Cultural and Physical Education Institutions in Rajasthan, 1963 (for short ''the Rules'') it has no right to remove her from the service without complying with the procedure prescribed by these Rules. Along with the suit, an application for grant of temporary injunction was also filed containing the same allegations.

3. The learned trial court, after hearing both the parties, came to the conclusion that all the three necessary ingredients for grant of temporary injunction i.e. prima facie case, balance of convenience and irreparable injury do not exist in favour of the plaintiff-non-petitioner and, therefore she is not entitled to any interim relief. Against this order of the learned trial court dated 28-10-1986, an appeal was preferred before the learned District Judge, Udaipur who trensferred it for disposal to the learned Additional District Judge No. 1, Udaipur, who after hearing both the parties, decided the appeal and restrained the defendant-petitioners from interfering with the functioning of the plaintiff-non-petitioner as Head Mistress of the Nursery School in pursuance of its order dated 26-9-1986. Hence this revision.

4. I have heard Mr. N.N. Mathur, learned Counsel for the defendant petitioners and Mr. Rajesh Balia, learned Counsel for the plaintiff-non-petitioner and have carefully gone through the record of the case.

5. It was contended by Mr. N.N. Mathur, learned Counsel appearing for the petitioners that the learned first appellate court has gravely erred in accepting the appeal. According to him, if the trial court has refused the discretionary relief of injunction and has given its reasons for refusing the same, that order of the trial court cannot be set aside in appeal unless it is arbitrary, perverse or capricious or it has been given in disregard of sound principles or without considering all the relevant material on record. If the appellate court while disposing of the appeals sets aside the decision of the trial court given on an interlocutory application without dealing with the reasoning that has prevailed with the trial court then such a decision is perverse in the eye of law. In this connection, reliance was placed on Smt. Vimla Devi v. Jang Bahadur 1977 RLW 326 and Girdhari Lal v. Mafia Devi Sharma AIR 1968 Raj. 237.

6. In Smt. Vimla Devi''s case (supra), a learned Single Judge of this Court held that appellate court can interfere only where trial court''s order is arbitrary or perverse or capricious or has been made in disregard of sound legal principles or without considering all the relevant material on record. In Girdhari''s. case (supra), a learned Single Judge of this Court held that the appellate court should be slow in up-setting a decision of a trial court in a matter relating to grant of temporary injunction unless the decision of the trial court is arbitrary, perverse or is not based on sound legal principles. It has further been held that when the appellate court does not apply its judicial mind on all the material brought on the record then in that case the approach of an appellate Court would be wrong and contrary to the well established principles Laid down by the High Court, more so when the appellate Court does not deal with the reasoning that has prevailed with the trial Court and further when it does not apply its judicial mind on the materials placed on the record, and in such cases, it will be presumed that the appellate court has committed a jurisdictional error and, therefore, a revision lies against such an order.

7. It was also contended by Mr. N N. Mathur, learned Counsel for the defendant-petitioners that the learned first appellate court has taken into consideration the Printed proforma of Appendix-IV, the form of agreement to be executed by the Heads of recognised aided institution, provided under the Rules, which was beyond his scope. He could only have considered the material that has been placed on record and could not have travelled beyond it. No reliance was placed on proforma of Appendix-IV of the Rules before the trial court and, therefore, no additional evidence could have been looked into without taking recourse to Order 41, Rule 27, CPC On behalf of the petitioner, his affidavit was filed (hat no such agreement was executed in proforma of Appendix-IV of the Rules. In this respect, reliance was placed on a decision of this Court in Kusum Kumar Chowdhary v. Supra Films 1971 RLW 282, where in it has been held that the affidavits filed by the parties should be considered by the Court and no protracted inquiry involving receipt of evidence in proof of facts should be made. Reliance was also placed on Smt. Vimla''s case (supra), where in it has been held that if the appellate court

decides the appeal on the basis of the additional evidence, which did not form part of the record of the trial court, the order of the appellate court amounts to material irregularity. Mr. N.N Mathur, learned Counsel appearing for the petitioners has, therefore, submitted that his revision is maintainable.

8. Mr. N.N. Mathur, learned Counsel appearing for the defendant-petitioners then proceeded to argue the revision petition on merits and has contended that the defendant-petitioner No. 1 is a registered society for educational purposes. It is true that the defendant-petitioner No. 1 is receiving aid from the Government of Rajasthan under the Rules but that does not make it a statutory body because it is not the produce of a statute. Its Managing Committee also is not the product of the Statute and hence, when it is not a statutory body, the contract of personal service cannot be specifically enforced by the plaintiff-non-petitioner. At best, if the plaintiff-non-petitioner becomes successful in her suit, she can claim damages or compensation but she is not entitled to be restored back to her original post because in matters of such personal service based on contract, no body can be thrust on the Management against its Will. In this respect, reliance has been placed on Vaish Degree College v. Lakshmi Narain AIR 1976 SC 888, where in it has been held as follows:

Before an institution can be a statutory body, it must be created by or under the statue and owe its existence to a siatute. This must be the primary thing which has got to be established. Here, a distinction must be made between an institution which is not created by or under a statute but is governed by certain statutory provisions for the proper maintenance and adminisitration of the institution. There have been a number of institutions which though not created by or under any statute have adopted certain statutory provisions, but that by itself is not sufficient to clothe the institution with a statutory character.

It is an admitted case of the parties that defendant-petitioner No. 1 is not a statutory body. It is not the creation of any Statute. More over, if it has adopted the Rules for the administration of the Institution, it does not become a statutory body created by or under the Statute only on that account. More over, the Rules are also not statutory. They are non-statutory administrative Rules. These Rules have not been issued under any Act. They have also not been issued in exercise of the powers which are vested in the Government of Rajasthan. They are only administrative instructions issued by the State Govt. It has been held by their Lordships of the Supreme Court in The State of Maharashtra and Another Vs. Lok Shikshan Sansatha and Others, that the provisions of the Grant-in-aid Code are executive instructions and are in the nature of administrative instructions without any constitutional force. Thus, simply because the Rules have been adopted as guide-lines for the management of the Institution, it does not mean that they made the Institution a statutory body.

9. A similar view has been expressed by their lordships of the Supreme Court in J. Smt. J. Tiwari Vs. Smt. Jwala Devi Vidya Mandir and Others, where in it has been observed:

The regulations of the University or the provisions of the Education Code framed by the State Govt. may be applicable to the institution which is registered under the Societies Registration Act, 1860. And if the provisions thereof are violated by it, the University may be entitled to disaffiliate the institution and the Government may perhaps be entitled to withdraw the educational grant payable to the institution. That does not however, mean that the institution is a public or a statutory body.

In giving this decision, reliance was placed on Vaish Degree College''s case (supra).

10. A Full Bench of the Allahabad High Court in Aley Ahmad Abidi Vs. Dist. Inspector of Schools, Allahabad and Others, observed as follows:

The Scheme framed by a recognised Intermediate College cannot be regarded as a piece of subordinate legislation like the Rules, Regulations, statutes, and Ordinances, which an Act empowers the Government or the statutory bodies under the Act to make or frame. A recognised Intermediate College which is required by s. 16 A to have a Scheme of Administration, cannot be regarded as statutory body. Thus, the Committee of Management contituted under such a scheme, is not a body constituted under a statute but is merely governed by the provisions of the Act and Regulations framed there under.

In Aley Ahmed''s case (supra), the Vaish Degree College''s case (supra) was followed.

11. It was contended by Mr. Rajesh Balia, learned Counsel appearing for the plaintiff-non-petitioner that an Institution registered under the Cooperative Societies Act may not be a statutory body but still it can be an instrumentality of the State. It has to abide by the Rules framed by the Govt. and any action taken by such an instrumentality of the State can be reviewed by the Court and proper relief can be granted In this respect, he placed reliance on a decision of their Lordships of the Supreme Court in Ajay Hasia vs. Khalid Mujib AIR 1981 SC 487, wherein it has been held:

It is immaterial for determining whether a Corporation is an authority whether the Corporation is created by a statute or under a statute. The test is whether it is an instrumentality or agency of the Government and not as to how it is created. The inquiry has to be not as to how the juristic person is born but why it has been brought into existence. The Corporation may be a statutory corporation created by a statute or it may be a Goverment company or a company formed under the Companies Act or it may be a society registered under the Societies Registration Act or any other similar statute. Whatever be its genetical origin, it would be an "authority" within the meaning of Article 12 if it is an instrumentality or agency of the Government and that would have to be decided on a proper assessment of the

facts in the light of the relevant factors. The concept of instrumentality or agency of the Government is not limited to a corporation created by a statute but is equally applicable to a company or society and in a given case, it would have to be decided, on a consideration of the relevant factors, whether the company or society is an instrumentality or agency of the Govt. so as to come within the meaning of the expression ''authority'' in Article 12. A juristic entity which may be "State" for the purpose of Parts III and IV would not be so for the purpose of Part XIV or any other provisions of the Constitution.

He further placed reliance on a decision of the Kerala High Court in M. Kunju Mohd v. State of Kerala 1984 LIC 1124 (FB), where in the phrase ''other authority'' as described in Article 12 of the Constitution came up for consideration and it was held that an authority is a State within the meaning of Article 12 of the Constitution if it is an instrumentality or agency of the Government. A decision on this question shall have due regard to the following tests:

[a] The entirely or a massive majority of the share capital in the hands of the Government is a penetrating index that it is an instrument or agent of the Government;

[b] ''Deep'' and "pervasive" State control is an affirmative assurance that it is Government agency or instrumentality. This can be gathered from the following surrounding circumstances as well:

(i) Domination in the composition of the Society or Company by the representatives of the Government;

(ii) Obedience to the directions of the Government for the Government for the performance of its functions;

(iii) The concurrence or approval of the Government for making rules and regulations;

(iv) The accounts requiring scrutiny and satisfaction of the Government;

(v) The effective control of the affairs of the Society/Corporation by the Government.

[c] Substantial financial assistance by the Government meeting practically the entire expenditure of the Company gives an added colour and flavour of Governmental agency;

[d] The public importance of the functions, in its nature allied to Governmental activity, is also yet another vital indication;

[e] Monopoly status of the Corporation either conferred or protected by the State;

[f] Statutory origin of the Corporation/Company may be the hall mark of "State", but the absence of this birth mark need not exclude it from the expensive area of ''State'' within Article 12.

Mr. Balia specifically Laid stress on principles [b] (ii), [b] (iii), [b] (iv), [b] (v), [c] and [d] Laid down in M. Kunju Mohd''s case (supra) He has submitted that defendant-petitioner No. 1 is getting 80% aid from the Government of Rajasthan. Rule 3 of the Rules provides that no grant shall be made to an institution unless it agrees to comply with the conditions here in after Laid down which are over and above the conditions prescribed by the University, the Board of Secondary Education Rajasthan and the State Department of Education and every institution which applies for grant-in-aid shall be deemed to have accepted an obligation to comply with these conditions that the institution shall neither prepare nor send up candidates unless permitted by the Director of Education for an examination held in another State when an examination of the same nature is held in Rajasthan by the Education Department, or Board of Secondary Education or the University and the institution shall satisfy the requirements Laid down under Appendix-I, regarding to constitution of the management or Governing body. It has further been Laid down that the institution shall supply to the Education Department a list of all assets that the income of which is utilised for its expenditure, and in the event of the Government being satisfied that a serious dispute exists in the Managing Committee or Governing Board of the institution which hampers the smooth running; of the Managing Committee is wilfully delayed for more than six months, the Government after giving them a show cause notice may suspend the Governing Body Council or the Managing Committee and appoint an Administrator to exercise control over the assets and to run the institution till a new Governing Body/Council or the Managing Committee is formed according to the rules or the dispute is settled otherwise. It has further provided that the institution shall promptly comply with all the instructions issued by the Department for the proper running of the Institution and no untrained teacher shall be permanently appointed in a school in a Teachers Training Institution without the permission of the Director of Education, unless the teacher concerned has been exempted from the training qualifications by the Department or the Board of Secondary Education, and no course will be started without obtaining prior permission of the Government Mr. Balia has, therefore, submitted that according to the tests Laid down by the Kerala High Court in M. Kunju Mohd''s case (supra), the defendant-petitioner No. 1 is an instrumentality of the State under the head ''other authority'' as provided in Article 12 of the Constitution. He has submitted that Vaish Degree College''s case (supra) is not the last word so far as such institutions are concerned, because in later decisions, it has been held that such institutions are the instrumentality of the State and, therefore, they are bound to follow the Rules prescribed by the Government and management.

12. Mr. N.N. Mathur, learned Counsel appearing for the defendant-petitioners has strongly repudiated this submission of Mr. R. Balia, learned Counsel for the plaintiff-non-petitioner. He has submitted that all the authorities cited by Mr. Balia relate to the institutions which have been held to be the instrumentality of the State. They apply only in cases where the extraordinary remedy by way of a writ is sought

under Article 226 of the Constitution or for that matter under Article 32 of the Constitution. In this case, the remedy under Article 226 of the Constitution has not been sought and, therefore, the submission of Mr. Balia is beside the point. Here, the plaintiff non-petitioner filed the suit for specific performance of the contract, to which the provisions of the Specific Relief Act are applicable and, therefore, the considerations that prevail in granting relief under Article 226 of the Constitution cannot be invoked in such a simple suit. More over, no such point was ever raised either before the learned trial court or before the learned first appellate court. In support of his argument, he has placed reliance on a decision of their Lordships of the Supreme Court in State of Maharashtra''s case (supra) where in it was held that so long as there is no violation of any fundamental rights and if the principles of natural justice are not offended, it is not for the High Court to lay down the policy that should be adopted by the educational authorities in the matter of granting permission for starting schools and the High Court should not interfere so long as fundamental rights and principles of natural justice are not violated.

13. The same view has been expressed by their Lordships of the Supreme Court in Varanasaya Sanskrit Vishwavidyalaya and Another Vs. Dr. Rajkishore Tripathi and Another, . In that case, their Lordships have been pleased to hold that in a matter touching either the principles or the administration of the internal affairs of a University, Courts should be most reluctant to interfere and they should refuse to grant an injunction unless a fairly good prima facie case is made out for interference with the internal affairs of educational institutions. Mr. Mathur, learned Counsel for the petitioners has submitted that of course, in Aley Ahmed''s case (supra), it has been held that though a writ is generally issued to the Government or a public authority, or a statutory body, there may be circumstances in which a writ may have to be issued to a person or body which is not statutory. Thus, even if the Committee of Management of a recognised Intermediate College is held to be a non-statutory body, such Committee will still be amenable to the writ jurisdiction of High Court, where such committee is entrusted with performance of statutory duties or conferred with statutory powers. The case in hand is not at all a case of writ jurisdiction and moreover, the Rules governing the management of the defendant-petitioner are neither statutory nor subordinate legislation but they are only administrative instructions and, therefore, these authorities which have been cited by Mr. Rajesh Balia, learned Counsel appearing for the plaintiff-non-petitioner have no application to the facts of the present case. It is a simple suit for specifi performance of service contract. It has been provided in R 4 of the Rules that the conditions of service of every member of the teaching and ministerial staff appointed substantively shall be governed by an agreement executed by him and the Governing Body/Council, or the Managing Committee, in the form given in Appendix-III. Thus, the conditions of the service of plaintiff-non petitioner are based on personal contract of service and they are not based on any statutory provisions and, therefore, in such matter, according to Mr. Mathur, no injunction can be issued

because such a contract of personal service ordinarily cannot be specially inferred by the courts of law. In this respect, he has pi iced reliance on a decision of their Lordships of the Supreme Court in Vaish Degree College''s case (supra), wherein it has been held:

A contract of personal service cannot ordinarily be specifically enforced and a Court normally would not give a declaration that the contract subsists and the employee, even after having been removed from service can be deemed to be in service against the Will and consent of the employer. This rule, however, is subject to three well recognised exceptions: (i) where a public servant is sought to be removed from service in contravention of the provisions of Article 311 of the Constitution of India; (ii) where a worker is sought to be reinstated on being dismissed under the Industrial Law; and (iii) where a statutory body acts in breach or violation of the mandatory provisions of the statute.

In that case, their Lordships noticed Executive Committee, U.P. Warehousing Corporation Vs. Chandra Kiran Tyagi, and Indian Airlines Corporation Vs. Sukhdeo Rai, In both these decisions, it has been held that it is a well settled principle that when there is a purported termination of a contract of service, a declaration, that the contract of service still subsisted, would not be made in the absence of special circumstances because of the principle that courts do not ordinarily grant specific performance of a personal contract of service. The well recognised exceptions to this rule are (1) where a public servant has been dismissed from service in contravention of Article 311(2) where reinstatement is sought to be dismissed worker under the Industrial Law by labour or Industrial Tribunals; (3) where statutory body has acted in breach of a mandatory obligation imposed by statute. The dictum Laid down in these three decisions has been followed by Calcutta High Court in Smt. Usha Das (Roy) Vs. Smt. Arati Kar (Maiti), , where in it has been held that a contract of personal service cannot ordinarily be specifically enforced and a court normally would not give a declaration that the contract subsists and the employee even after having been removed from service can be deemed to be in service against the Will and consent of the employer. Even in Usha Das''s case (supra) it was incidentally observed that the Managing Committee of a School constituted in accordance with the rules framed under the West Bengal Secondary Education Act, 1950 is neither a body corporate nor a statutory body. In the case in hand, the defendant-petitioner No. 1 has not been constituted in accordance with any Educational Act. It is only a Society registered under the Societies Registration Act and the Rules that govern its management are in the form of executive and administrative instructions.

14. In Vaish College''s case(supra) came-up for consideration before their Lordships of the Supreme Court in Dipak Kumar Biswas Vs. Director of Public Instruction and Others, , where in it was held that the College in which appellant was appointed as a lecturer was not a statutory body because it has not been created by any statute

and its existence was not dependent upon any statutory provision. Merely because, the Director of Public instruction, had proceeded on the erroneous assumption that the Assam Aided College Employees Rules, 1960 and the Assam Aided College Management Rules, 1965 had been adopted by the State of Meghalya and, therefore, the appellant''s appointment was in contravention of the rules and consequently he should decline to approve the appointment of the appellant, the appellant''s allegation that he should be granted a declaration that he continues to be in the service of the college and that he was entitled to all the benefits flowing from the declaration could not be sustained as the action of the Director of Public Instruction was not in contravention of any statutory provisions or regulations or procedural rules. Thus, the ratio of the decision of their Lordships of the Supreme Court in Vaish Degree College''s case (supra) has been further endorsed by Supreme Court in Dipak Kumar''s case (supra).

15. It was next contended by Mr. R. Balia, learned Counsel for the plaintiff-non-petitioner that the decision in Vaish Degree College''s case (supra) has been given by three Judge of the Supreme Court and it was only a Majority decision because P.N. Bhagwati, J. (as he then was) did not express any opinion about this question and so, actually it is a decision of two Judges of the Bench whereas there exists an earlier decision of the larger Bench of the Supreme Court in Prabhakar Ramakrishna Jodh Vs. A.L. Pande and Another, (by four Judges). Mr. Balia has submitted on the strength of Addagada Raghavamma and Another Vs. Addagada Chenchamma and Another, that one Division Bench decision is binding on another Division Bench whereas Prabhakar Ramakrishan Jodh''s case has been decided by a larger bench consisting of four Hon''ble Judges of the Supreme Court, and, therefore, it was binding on the two Judges of the Supreme Court who have decided the case in Vaish Degree College''s case (supra). To me, this arguments appears to be fallacious. In Prabhakar Ramakrishna Jodh''s case (supra) their Lordships of the Supreme Court came to the conclusion that P.R. Jodh''s case (supra) the institution itself was a creature of the statute, viz., the University of Saugar Act and its governing body was created by an Ordinance passed under the University of Saugar Act and so, that case was distinguished by their Lordships of the Supreme Court.

16. Mr. R. Balia, learned Counsel for the plaintiff non-petitioner has also placed reliance on a decision of their Lordships of the Supreme Court in Indra Pal Gupta Vs. Managing Committee, Model Inter College, Thora, In that case, the services of the petitioner were terminated by casting a stigma on him and so, that case has no application to the facts of the present case.

17. Similarly, reliance was also placed on a decision of their Lordships of the Supreme Court in Manmohan Singh Jaitla Vs. Commissioner, Union Territory of Chandigarh and Others, . That was a case of malafide termination of the services of a Head Master of an aided school without enquiry as envisaged by Section 3 of the Punjab Aided Schools (Security of Service) Act (19 of 1969) as extended to the Union

Territory of Chandigarh The only ground for termination of service was that they were appointed by outgoing management and hence, it was observed that the action was malafide and the orders were liable to to be quashed. Such is not the case before us and hence, this authority has no application to the facts of the present case.

18. The upshot of the entire discussion is that the consideration of any Institution being the instrumentality of the State as provided by Article 12 of the Constitution has no relevance in a suit filed before the Civil Court under the provisions of the CPC It is not a case of granting any extra ordinary remedy and, therefore, that consideration becomes irrelevant. If the plaintiff is governed by the personal contract of service of an aided institution whose management may be governed by the administrative instructions issued by the Government in the shape of the Rules then too, it does not become a statutory body. Hence, such a contract of service cannot ordinarily be specifically enforced unless the following well-recognised principles exist:

[1] where a public servant is sought to be removed from service in contravention of the provisions of Article 311 of the Constitution of India;

[2] where a worker is sought to be reinstated on being dismissed under the Industrial Law; and

[3] where a statutory body acts in breach or violation of the mandatory provisions of the statute.

When the contract of personal service cannot be specifically be enforced and no declaration ordinarily should be granted about it then no injunction can be granted in favour of the plaintiff to retain her on the post from where her services have been terminated or from where she has been reverted to her original post. When no such relief can be granted even in the suit then no temporary relief can be granted by the Civil Court to retain her in Service against the Will of the management. Such a plaintiff cannot be thrusted on the management against its Will While examining the judgment of the learned first appel''ate court on the touch stone of the aforesaid position of law, it is crystal clear that such an injunction ought not to have been granted because no prima facie case exists in favour of the plaintiff non-petitioner for her retention on the post. At best, if she has been wrongly reverted, she can claim damages.

19. Mr. Balia has submitted that reduction in rank is a loss of status and that cannot be compensated in money. It is true that it is a loss of status but if no status can be granted to keep her on the post against the Will of the management because it is based on a personal contract of service then no relief can be granted against the law, even if it amounts to reduction in rank or status.

20. It was contended by Mr. Mathur that service conditions of the plaintiff-non-petitioner are governed by Appendix-3 of the Rules where as Mr. Balia has submitted that they are governed by the provisions of Appendix-4 of the Rules. Actually, this matter has to be decided by the trial court after recording evidence and, therefore, it will not be proper for me express any opinion at this stage. Rather, there is a controversy about the fact whether any agreement was either executed or nor. That matter also will have to be decided by the learned trial court and so, I need not enter into this controversy while deciding this revision petition against an appellate order of the learned first appellate court on an interlocutory application.

21. It was next contended by Mr. R. Balia, learned Counsel for the plaintiff-non-petitioner that after the expiry of one year of probation, the plaintiff-non-petitioner was automatically confirmed I have already said that whether the terms and conditions of the services of the plaintiff-non-petitioner are governed by Appendix-3 or Appendix-4 of the Rules; whether she has executed any written agreement under Appendix-3 or Appendix-4; whether she should be treated as automatically confirmed on the expiry of the period of one year or for that matter two years and whether she has any right to be confirmed automatically are matters which will require greater scrutiny and evidence and, therefore, I refrain myself from expressing any opinion about them. These points can be dealt with better by the trial court where the evidence will be led and on the basis of the pleadings of the parties, the issue will be framed and thereafter these points will be decided.

22. It was lastly contended by Mr. N N. Mathur, learned Counsel for the defendant-petitioners that for the purposes of granting an injunction under Order 39, Rules 1 and 2, CPC, the parties are required to maintain the position as it existed on the date of filing of the suit. The suit was filed on 29-9-1986. The plaintiff-on-petitioner was reverted to her original post of Second Grade Teacher on 26-9-1986. Some other Teacher (the defendant-petitioner No. 2) took over charge of the Head Mistress from the plaintiff and started working on that post. Thus, when the suit was filed and for that matter, when this interlocutory application was filed, she was no more working as Head Mistress and, therefore, no order in the shape of a mandatory injunction can be issued in favour of the plaintiff-non-petitioner under Order 39, Rules 1 and 2, CPC to restore her back to the position from where she has already been reverted in the afternoon of 26-9-1986 and which came into effect on 27-9-1986 on taking over charge by Smt. Pushpa as Head Mistress. Mr. Mathur has, therefore, contended that on the date of the suit, she was not working as Head Mistress and, therefore, it cannot be ordered that the plaintiff-non-petitioner should be allowed to work as Head Mistress. I have already held that she is not. entitled to any such interim injunction that she should be allowed to work on the post of Head Mistress because the contract of personal service cannot be specifically enforced. This is one more reason why she should not be allowed to work as Head Mistress because on the date of the suit she was not working on that post. I, therefore, feel that the learned lower court has gravely erred in granting an injunction in favour of

the plaintiff-non-petitioner.

23. The result is that this revision petition is accepted and the judgment of the learned first appellate court i.e. the learned Additional District Judge No. 1, Udaipur dated 16-12-1986 is set aside. In the facts and circumstances of this case, I leave the parties to bear their own costs of this revision petition.