PETITIONER:
DIPAK KUMAR BISWAS

Vs.

RESPONDENT:
DIRECTOR OF PUBLIC INSTRUCTION & ORS.

DATE OF JUDGMENT06/03/1987

BENCH:
NATRAJAN, S. (J)
BENCH:
NATRAJAN, S. (J)
SEN, A.P. (J)

CITATION:
1987 AIR 1422 1987 SCR (2) 572
1987 SCC (2) 252 JT 1987 (1) 631
1987 SCALE (1)544
CITATOR INFO :
D 1989 SC1607 (11,12)
R 1990 SC 415 (17,22,25)

ACT:
Constitution of India: Article 136--Powers of the Court to enlarge relief.
Service Law: Lecturer of private aided college--Status of-Wrongful termination of service of--Nature of relief--Whether entitled to declaration of continuance in service--Aided colleges--Whether statutory bodies.
Assam Aided College Employees Rules, 1960: Assam Aided College Management Rules, 1965--Whether adopted in State of Meghalya.

HEADNOTE:
The appellant, who was holding a permanent post in a Central Government department, was selected for the post of Lecturer in a private aided college in Meghalya. The order of appointment stated that it was subject to the approval of the first respondent. On his seeking clarification from the Principal he was assured that the approval was a mere for-mality. Acting on the said assurance the appellant resigned his permanent post in the Government department and joined the college. However, he found his services terminated just within five months for want of prior approval of the first respondent.
A suit filed by the appellant challenging the order of termination and for a declaration and permanent injunction was dismissed by the trial court. The first Appellate Court found that the Assam Aided Colleges Management Rules, 1965 had not been adopted by the State Government at the time of the appellant's appointment and that the Director of Public Instruction had acted wrongly in refusing to give approval to the appellant's appointment, and as such the order of termination of service of the appellant was manifestly wrong. It, therefore, declared appellant's continuance in service.
The High Court while concurring with the view of the first Appellate Court that the termination of services of the appellant was unlawful, awarded one year's salary and allowances as damages since the

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appellant did not belong to the category of either Government servants, industrial workmen or employees of statutory bodies, for which alone reinstatement could be ordered.

In this appeal by special leave it was contended for the appellant that the Appellate Court and the High Court having found the termination of service to be wrong and illegal, he should have been granted the relief sought for in the suit, that is, a declaration of continuance in service and reinstatement with full back wages and allowances. It was further submitted that since the college was a private institution provided and by the Government and Government had full supervisory control over it, it was for all practical purposes a Government institution. As such, he was entitled to parity of treatment with a Government servant wrongly removed from service. For the respondent it was contended that the only remedy for the appellant was to file a suit for damages and not to seek a declaration of continuance in service, because it would amount to seeking specific performance of a contract of service.

Allowing the Appeal in part, the Court,

HELD: The appellant was not entitled to a declaration that he continued to be in the service of the college and that he was entitled to all the benefits flowing from the declaration. [581G]

Even though the College in question may be governed by the statutes of the University and the Education Code framed by the Government of Meghalaya and even though the college may be receiving financial aid from the Government, it would not be a statutory body because it haS not been created by any statute and its existence is not dependent upon any statutory provision. [580F-G]

Vaish College v. Lakshmi Narain, [1976] 2 SCR 1006 and J. Tewari v. Jwala Devi Vidya Mandir & Others, [1979] 4 SCC 160, referred to.

There was no violation of the provisions of any Act or any Regulations made thereunder in the instant case. The first respondent in declining to approve the appointment of the appellant 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. No doubt such action has been held to be wrongful but even so it was not in contravention of any
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statutory provisions or regulations or procedural rules. [581E-G]

I.P. Gupta v. Inter College, Thora, [1984] 3 SCR 752, distinguished.

The misfortune that has overtaken the appellant was partly due to his own hasty action in resigning his permanent post and partly on account of the first respondent disapproving the appellant's appointment on the basis of rules which had not been formulated and communicated to the aided colleges. In spite of the sad plight of the appellant, therefore, it will not be possible to grant the relief of declaration as sought for by him.[578C-D]

[In the facts and circumstances of the case and in exercise of its powers under Article 136 of the Constitution, the Court enlarged the relief grunted to the appellant by the High Court by directing the State of Meghalaya to grant three years salary and allowances to the appellant at the rates prevalent when his services were terminated. It further directed that in the event of there being a vacancy in the College in question for the post of Lecturer in English, and in the event of the Management willing to

appoint him as Lecturer once again, the Management should be permitted to do so by granting relaxation of rules and regulations. ]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2318 of 1985

From the Judgment and Order dated 1.8.83 of the Gauhati High Court in S.A. No. 19 of 1978.

Appellant-in-person

D.N. Mukherjee for the Respondents.

The Judgment of the Court was delivered by

NATARAJAN, J'-' This appeal by special leave is directed against a judgment of the Gauhati High Court rendered in Second Appeal No. 19 of 1978. By a quirk of fate the appellant who was holding a permanent post of Auditor in the Office of the Accountant General, Assam resigned his job and took up appointment as a Lecturer in an aided college in Meghalya only to find his appointment terminated in five months' time for want of approval for the appointment by the Director

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of Public Instruction. The backdrop of events for this appeal are as narrated below.

The appellant who was a confirmed Auditor in the Office of the Accountant General, Assam responded to an advertisement in the Assam Tribune dated 21.2.75 and offered himself as a candidate for appointment as a Lecturer in English in Lady Keane Girls College, Shillong. Respondents 2 and 3 are respectively the Principal and the President of the Governing Body of the said College. After being interviewed along with other candidates on 27.3.75 the appellant was selected for the post and was issued an order of appointment on 7.4.75. The order of appointment, however, stated that the appointment was subject to the approval of the Director of Public Instruction, Meghalya, the first respondent herein. On the appellant seeking clarification from the Principal about this condition he was assured that the sanction of approval was a formality and there was no jeopardy to his appointment. Acting on this assurance the appellant resigned his post in the Accountant General's Office and joined the College on 2.5.75. To his shock he received a communication from the Principal on 11.9.75 enclosing a copy of letter of the first respondent dated 28.8.75 informing him that his services would be terminated with effect from 17.9.75. By reason of the appellant's representations the matter was kept in abeyance till 1.12.75 when he received a further communication stating that his services were being terminated with immediate effect for want of prior approval of the first respondent.

The appellant filed a suit in the Court of the Assistant District Judge, Shillong to challenge the order of termination and sought the reliefs of declaration and permanent injunction. The trial court granted ad interim injunction and later made it absolute and in terms thereof the appellant continued to be in service till 20.4.77 on which date the trial court dismissed the suit and vacated the injunction.

The Assistant District Judge held that the appointment of the appellant without prior approval of the Director of Public Instruction was irregular and furthermore the appointment contravened the Government's Resolution regarding the reservation of posts for backward sections of the people

of the State and that the policy applied to all Government institutions as well as private institutions aided by the Government. The trial court further held that in any event the appellant will not be entitled to a relief of declaration regarding his continuance in service and that the remedy for the appellant under law, if any, is to file a suit for damages for wrongful dismissal and seek reliefs.
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The appellant preferred an appeal to the District Judge, Shillong. The learned Appellate Judge held that except the oral testimony of the Deputy Director of Public Instruction regarding the Government's reservation policy there was no material on record to show the formation of any such policy and much less that the policy of the Government had been published or even communicated to the aided colleges prior to the appellant being appointed. The learned Judge also held that in the absence of any notification or circular by the Government (of Meghalya) showing that the Assam Aided Colleges Management Rules, 1965, had been adopted it was not possible to hold that the Government had actually adopted the said rules. The Appellate Judge, therefore, held that the Director of Public Instruction had acted wrongly in refusing to give approval to the appellant's appointment and as such the order of termination of service of the appellant was manifestly wrong. In accordance with such findings the Appellate Judge allowed the appeal and decreed the suit and declared the appellant's continuance in service as a Lecturer in English in the second respondent's college.

The judgment and decree of the Appellate Judge was challenged in Second Appeal before the Gauhati High Court by the first respondent. A learned Single Judge of the High Court concurred with the findings of the Appellate Judge and held that the State of Meghalya had not adopted the Assam College Management Rules, 1960 at the time of the appellant's appointment and as such the termination of the services of the appellant was unlawful. However, on the question of relief that can be granted to the appellant the learned Judge differed from the view of the Appellate Judge and held that reinstatement of the appellant in service was not possible as the appellant did not belong to one of those categories for which alone reinstatement can be ordered viz. (1) Government servants, (2) industrial workmen and (3) employees of statutory bodies. The learned Judge, therefore, held that the appellant would only be entitled to damages for wrongful termination of service. Even then after taking into consideration the unnviable position of the appellant and his continuance in service for about one and half years during the pendency of the suit, the learned Judge awarded one year's salary and allowances as damages and disposed of the appeal with the abovesaid modification. It is against this judgment of the High Court the appellant has preferred this appeal.

The appellant appeared in person and argued the appeal before us. He contended that neither in the advertisement made by the college authorities nor at the time of the interview, nor in the order of
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appointment was there anything to show that the Government of Meghalya had adopted the Assam Aided College Management Rules, 1965 and the Assam Aided College Employees Rules, 1960 and as such he had reason to believe that when once the Selection Committee found him suitable for the appointment he would be confirmed in the post of Lecturer after his successful completion of probation. He further stated that he verified from ,he Principal as to whether his appointment

would be disapproved by the first respondent for any reason and he was assured by the Principal that the sanction of approval was only a formality and, therefore, his appointment would not be in jeopardy in any manner. Having regard to all these factors he resigned his permanent post in the office of the Accountant General, Assam and had devoted himself fully to his task as a Lecturer in the college. Therefore, it was a rude shock to him when he was issued an order of termination of service on the ground that the first respondent had not approved the appointment. It was also urged by him that he had established in the trial of the suit that his was the first case where approval was not given and that there had been no previous instance of denial of approval of appointments made in any of the aided colleges in the State of Meghalya. The appellant laid stress on the fact that the Appellate Court as well as High Court have both sustained his contentions and held that his appointment had not been made in contravention of any of the rules framed by the Government and as such the refusal of the first respondent to approve his appointment was wrong and the termination of his service was illegal. The further submission of the appellant was that since the Appellate Court and the High Court have found the termination of his service to be wrong and illegal, he should have been granted the relief sought for in the suit viz. a declaration that he continued to be in service all along and that he was entitled to reinstatement with full back pay and allowances. The appellant also contended that though the Lady Keane Girls College is a private institution it was being provided aid by the Government and Government had full supervisory control over it and as such the college is for all practical purposes a Government institution and in such circumstances he is entitled to parity of treatment with a Government servant wrongly removed from service. The prayer of the appellant, therefore, was that he should be granted a declaration regarding his continuance in service so as to entitle him to all the benefits ensuing from such a declaration viz. reinstatement in service together with back pay, allowance 'and other benefits.

Opposing the arguments of the appellant the learned counsel for the first respondent argued that the Lady Keane Girls College is a

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private institution and not a Government institution, that merely because it receives aid from the Government and the appointments made by the Management are subject to the approval of the first respondent, the college would not become a Government institution nor can the appellant claim parity of treatment with Government servants. The learned counsel also stated that in spite of the findings of the Appellate Court and the High Court that the termination of service of the appellant was wrongful, the only remedy for the appellant is to file a suit and not to seek a declaration of continuance in service because it would amount to seeking specific performance of a contract of service.

We have bestowed our anxious consideration to the arguments advanced by the appellant because of the misfortune that has overtaken him partly due to his own hasty action in resigning his permanent post and partly on account of the first respondent disapproving the appellant's appointment on the basis of rules which had not been formulated and communicated to the aided colleges. On an examination we find that in spite of the sad plight of the appellant it will not be possible to grant him a relief of declaration as sought for by him. The reasons for our view may now be set out.

The legal status of an employee in a privately managed college and whether a contract for personal service can be specifically enforced came up for consideration before this Court in Vaish College v. Lakshmi Narain, [1976] 2 S.C.R. 1006. The facts in that case were as follows. Vaish Degree College which was registered under the Registration of Cooperative Societies Act was initial affiliated to the Agra University and later to the Meerut University. A Principal of the college who was appointed after obtaining formal approval of the Vice-Chancellor was terminated from service about two years later. The Principal challenged the order of termination in a suit filed by him on various grounds and he sought for a declaration regarding his continuous in service. The trial court dismissed the suit but the Appellate Court decreed the same. In the second appeal there was a reference to a Full Bench regarding the jurisdiction of the civil court to entertain the suit and eventually the second appeal filed by the management was dismissed and the management came up in appeal to this Court by special leave. This Court held that the Executive Committee of the college was not a statutory body because it had not been created by or under the statute and did not owe its existence to a statute. But on the contrary it was a body which came into existence on its own and was only governed by certain statutory provisions for the proper mainte-
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nance and administration of the institution. The Court summed up the law in the following words:-

> "It is, therefore, clear that there is a well marked distinction between a body which is created by the statute and a body which after having come into existence is governed in accordance with the provisions of the statute. In other words the position seems to be that the institution concerned must owe its very existence to a statute which would be the fountain-head of its powers. The question in such cases to be asked is, if there is no statute would the institution have any legal existence. If the answer is in the negative, then undoubtedly it is a statutory body, but if the institution has a separate existence of its own without any reference to the statute concerned but is merely governed by the statutory provisions it cannot be said to be a statutory body. The High Court, in our opinion, was in error in holding that merely because the Executive Committee followed certain statutory provisions of the University Act or the statutes made thereunder it must be deemed to be a statutory body."

The Court then proceeded to consider the next question regarding a contract of personal service being specifically enforceable. After referring to the decisions in S.R. Tewari v. District Board, Agra & Anr., [1964] 3 SCR 55, 59, Executive Committee of U.P. State Warehousing Corporation Ltd. v. Chandra Kiran Tyagi, [1970] 2 SCR 250, 265; Bank of Baroda v. Jewan Lal Mehrotra, [1970] 2 L.L.J. 54, 55 and Sirsi Municipality v. Kom Francis, [1973] 3 SCR 348, the Court held as follows:-

> "On a consideration of the authorities mentioned above, it is, therefore, clear 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. 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 Art. 3 11 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
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> statutory body acts in breach of violation of the mandatory provisions of the statute."

The matter again came to be considered in the case of J. Tewari v. Jwala Devi Vidya Mandir & Others, [1979] 4 SCC 160. In that case the appellant, Smt.J. Tewari was appointed as the Headmistress of the Jwala Devi Vidya Mandir, Kanpur which was a Society registered under the Societies Registration Act, 1860. Smt. J. Tewari who later became the Principal of the institution challenged her order of suspension in an earlier suit and her order of termination from service in a later suit. The second suit was partly decreed by the trial judge and he upheld that the termination of service of Mrs. J. Tewari was not legal and awarded her a sum of Rs. 15,250 as arrears of pay for a period of 3 years together with interest and provident fund contribution. The High Court confirmed the decree but held that the sum awarded to her should be by way of damages and not towards arrears of salary since Smt. J. Tewari will not be entitled to a declaration that she continued to be in the service of the institution and to a consequent order of reinstatement. In further appeal to this Court by certificate it was contended that the institution was a statutory body and that Smt. J. Tewari was entitled to a declaration regarding her continuance in service. This Court repelled the contention and held that the Vidya Mandir, in spite of being governed by the University regulations and the provisions of the Education Code framed by the State Government and also being aided by educational grants, still constituted only a private institution and as such Smt. J. Tewari would only be entitled to a decree for damages, if her dismissal was wrongful and not to an order of reinstatement or a declaration that notwithstanding the termination of her services she continued to be in service.

The law enunciated in these decisions stand fully attracted to this case also. Even though the Lady Keane Girls College may be governed by the statutes of the University and the Education Code framed by the Government of Meghalya and even though the college may be receiving financial aid from the Government it would not be a statutory body because it has not been created by any statute and its existence is not dependent upon any statutory provision.

The appellant, however, placed reliance on another decision of this Court in I.R. Gupta v. Inter College, Thora, [1984] 3 SCR 752. In that case Shri I.P. Gupta who was appointed as Principal of the college on probation for one year was placed on further probation for one more year. During the period of the extended probation his services
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were terminated. Although the order of termination was innocuous in its terms it was accompanied by an enclosure containing the resolution of the Managing Committee with a reference therein to an adverse report given by the Manager against the Principal. It was, therefore, contended that the

order of termination cast a stigma on the Principal and hence his services ought not to have been terminated without due notice and enquiry. It was this contention which was the principal issue in that case. Dealing with that contention this Court found that the college was an institution recognised under the Intermediate Education Act and was governed by the provisions of the Act and the regulations made thereunder and that Regulations 35 to 38 prescribed the procedure to be followed before the services of an employee can be terminated by way of punishment. The management, however, did not follow the procedure prescribed by the regulations which were virtually the same as provided by Article 311(2) of the Constitution. This Court, therefore, held that the principles which should govern the case should be the same as those underlying Article 311(2). It was in that view of the matter this Court allowed the appeal and restored the judgment of the Single Judge of the High Court declaring that the appellant contained to be in the service of the college and that he was entitled to all the benefits flowing from the declaration including the salary and allowances as if there was no break in his service. The facts of the abovesaid case are clearly distinguishable because the case pertained to termination of service by way of disciplinary action. In the instant case there is no such violation of the provisions of any Act or any Regulations made thereunder. This is a case where the first respondent 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. No doubt his action has been held to be wrongful but even so it is not in contravention of any statutory provisions or regulations or procedural rules. We are, therefore, unable to accept the appellant's contention that he should be granted a declaration that he continues to be in the service of the college and that he is entitled to all the benefits flowing from the declaration.

Notwithstanding this conclusion we feel that the peculiar facts of the case which are indeed distressing, call for some relief being given to the appellant instead of a brusque dismissal of the appeal on account of the legal impediments for granting the relief of declaration of his continuance in service. We have already set out the tragic situa-

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tion that has resulted on account of the appellant's services being terminated after he had closed his options to revert back to his service in the Accountant General's Office. The trial court which dismissed the suit and the High Court which has modified the decree of the Appellate Court have also noticed this position and expressed their compassion for the appellant. It was on account of that the High Court has granted monetary compensation of one year's salary to the appellant as damages. We think that in the fact and circumstances of the case and in exercise of our powers under Article 136 of the Constitution we should enlarge the relief granted to the appellant by the High Court by directing the State of Meghalya represented by the first respondent to grant 3 years' salary and allowances to the appellant at the rates prevalent when his services were terminated on 1.12.75. Though the appellant had remained in service till 20.4.77 in spite of the termination order, the salary payable for that period is towards the services

actually rendered by him in the college. Hence no portion of that amount can be treated as damages. If the appellant has not been paid the salary and allowances for any portion of the period between 1.12.75 to 20.4.77, the first respondent is further directed to release such sums of money as would be required to make good the unpaid salary and allowances. We give this direction because we find a letter in the paper book written by the second respondent stating that they are unable to pay the salary and allowances due to the appellant on account of non-release of funds by the first respondent. The first respondent will make the payments indicated above on or before 30th June, 1987. The grant of this relief will be in consonance with the reliefs granted by this Court to the affected parties in Vaish College case (supra) and Smt. J. Tewari's case (supra). In the former case the Principal whose services were terminated was allowed to retain a total sum of Rs.21,100 deposited by the Educational Institution under orders of court during the pendency of the proceedings. In the latter case Smt. J. Tewari had been granted 3 years' salary by way of damages. In addition to the payment of the abovesaid sums we also direct that in the event of there being a vacancy in the Lady Keane Girls College for the post of Lecturer in English and in the event of the Management willing to appoint the appellant as a Lecturer once again the Management should be permitted to do so by the first respondent by granting relaxation of rules and regulations currently in force governing the filling up of posts of Lecturers in aided colleges in the State of Meghalya. To the extent, additional reliefs are given to the appellant the appeal will stand allowed. The appellant will be entitled to costs in the appeal payable by the first respondent.

P.S.S. Appeal allowed.

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