

W.P.(MD)No.19133 of 2023

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**RESERVED ON : 27.09.2023**

**PRONOUNCED ON : 02.11.2023**

**CORAM:**

**THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI**

**W.P.(MD)No.19133 of 2023**

**and**

**W.M.P.(MD)Nos.15875 & 15876 of 2022**

Dr.C.N.S.Ramnath Babu

... Petitioner

Vs.

1.The Registrar,  
Bharathidasan University,  
Palkalaiperur,  
Tiruchirappalli – 620 024.

2.The Chairman,  
Bharathidasan Institute of Management,  
MHD Campus, BHEL Complex,  
Tiruchirappalli - 620 014.

3.The Director,  
Bharathidasan Institute of Management,  
MHD Campus, BHEL Complex,  
Tiruchirappalli - 620 014.

4.Dr.Asith Kumar Barma,

The Director,  
Bharathidasan Institute of Management,  
MHD Campus, BHEL Complex,  
Tiruchirappalli - 620 014.

... Respondents

**PRAYER** : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned orders of termination issued by the third respondent Director vide E-mail communication in Ref. NO.BIM/TS/RB/2023 dated 07.07.2023, quash the same, further direct the second and third respondents to reinstate the petitioner and in service as Assistant Professor in the third respondent Bharathidasan Institute of Management, Trichy with all consequential benefits including arrears of salary and continuity of service.

For Petitioner	: Mr.Issac Mohanlal, Senior Counsel For M/s.Issac Chambers
For R1	: Mr.V.R.Shanmuganathan
For R2	: Mr.Sathish Parasaran, Senior Counsel
For R3 & 4	: Mr.Ajmal Khan, Senior Counsel for M/s.Ajmal Associates

**ORDER**

***The prayer in the writ petition reads as follows:-***

*This Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned orders of termination issued by the third respondent Director vide E-mail communication in Ref. NO.BIM/TS/RB/2023 dated 07.07.2023*

*and to direct the second and third respondents to reinstate the petitioner and in service as Assistant Professor in the third respondent Bharathidasan Institute of Management, Trichy with all consequential benefits including arrears of salary and continuity of service.*

2.Heard Mr.Issac Mohanlal, learned senior counsel for M/s.Isaac Chambers, appearing for the petitioner, Mr.V.R.Shanmuganathan, learned counsel appearing for the 1<sup>st</sup> respondent, Mr.Sathish Parasaran, learned Senior counsel appearing for the 2<sup>nd</sup> respondent and Mr.Ajmal Khan, learned Senior counsel appearing for the 3<sup>rd</sup> and 4<sup>th</sup> respondents and perused the entire materials available on record.

***The case of the petitioner in nutshell is as follows:-***

3.The writ petitioner completed B.E. (Mechanical) Degree from National Institute of Technology, Tiruchirappalli and has acquired MBA Marketing at Bharathidasan Institute of Management, Tiruchirappalli and Ph.D (Marketing) Degree from Bharathidasan University, Tiruchirappalli

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and he is 49 years old and before getting appointed in the Bharathidasan Institute of Management, he had around 13 years of Industrial experience and 12 years in teaching experience. When the writ petitioner was serving in Xavier Institute of Management & Entrepreneurship, at Bangalore, the third respondent issued recruitment notification on 12.12.2020, inviting eligible candidates for appointment to the post of Assistant Professor. The writ petitioner submitted his application to the post of Assistant Professor. By constituting an expert selection committee, the institution conducted the selection process on 28.01.2021. Being satisfied with the merit, ability and suitability, the Selection Committee recommended the writ petitioner to be appointed in the post of Assistant Professor.

4. Thereafter, the third respondent issued the writ petitioner with an appointment order appointing him as Assistant Professor with effect from 16.04.2021 vide order dated 12.03.2021. The writ petitioner joined as Assistant Professor on 16.04.2021 and was placed as probationer for a period of two years commencing from 16.04.2021. As such, the writ petitioner's period of probation commenced from 16.04.2021 and ends on 15.04.2023. While so, to the utter shock of the writ petitioner on 4/56

07.07.2023, he was served with an impugned order of termination through email at 03.00 p.m., stating that the same was an order of termination during probation.

5.A bare perusal of the impugned order shows that the order of termination is stigmatic and tainted with malice. The impugned order refers to unsatisfactory service and the complaints of students and faculties, the copies of which were never furnished to him. That apart, he was not given an opportunity of hearing before the said issuance of termination order. After the receipt of the impugned termination order, the writ petitioner approached the third respondent and enquired about the same for which, the writ petitioner was issued with an impugned relieving order dated 07.07.2023 stating that during his probation period of two years, his work and performance was not satisfactory and hence, he has been relieved from the afternoon on 07.07.2023 by paying three months salary in account in advance. On 15.07.2023, i.e., at Saturday, the petitioner requested the fourth respondent to site reasons for unsatisfactory service. The writ petitioner was shocked to hear many irrelevant reasons, which are in no way connected with his performance

as Assistant Professor during the period of probation.

6. Refuting each allegation, the writ petitioner submitted a detailed reply by email communication dated 16.07.2023 to the second and third respondents. The writ petitioner met the second respondent Chairman in person and submitted a detailed representation and also sent an email dated 13.07.2023 about his credentials and the service rendered during the period of probation and to reconsider the decision. The writ petitioner had sent an email communication to the second respondent Chairman and other board members and presented his representation on 24.07.2023. Since there was no response in all these representations, this writ petition came to be filed challenging the impugned termination order and relieving order dated 07.07.2023.

***Submissions :-***

7. The learned Senior counsel Mr. Ajmal Khan, appearing for the respondents 3 and 4 submitted that the writ petition itself is not maintainable, since Bharathidasan Institute of Management is governed

by separate Board of Governors, which was created and registered in 1983 under the Tamil Nadu Societies Registration Act, 1975. Bharathidasan Institute of Management Society established by Bharathidasan Institute of Management is an independent Autonomous Business School to provide for instructions and research in Management and allied studies with its own Byelaws to create and appoint all administrative, technical and other posts including the Director and to pay salary. The society was empowered to add, amend, vary and rescind the Byelaws from time to time under Rule 7(g)(ii) of the Byelaws.

8.The Bharathidasan Institute of Management Society is a self financing entity and does not get any financial aid and grants from UGC, AICTE or Central/State Government. Since Bharathidasan Institute of Management (herein and after referred as BIM) is independent of the first respondent University and the same is governed by the Tamil Nadu Societies Registration Act, 1975, the writ petitioner cannot invoke the Writ jurisdiction of this Court and hence, the writ petition is liable to be dismissed on maintainability grounds itself. That apart, the writ petitioner challenges the order dated 07.07.2023 passed by the third respondent

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terminating the services of the writ petitioner on the ground that during the period of probation, the performance of the writ petitioner is not satisfactory to the Institution. The order impugned in the writ petition is an order of termination simpliciter and the writ petitioner's service is not satisfactory and also is not in the interest of the institution as well as students. This Court has dealt with a similar case in W.P.(MD)No.16362 of 2017 dated 14.06.2023 and has dealt with an issue of termination simpliciter and the same is extracted as follows:-

*“The contention of the petitioner is that the appointment order specifically states that the petitioner shall be on probation for a period of 2 years from the date of joining. Therefore, on completion of 2 years, the petitioner is automatically confirmed in the said post. The said contention is refuted by the respondents by stating that the terms and conditions of the College stipulates the probation shall be normally for a period not less than 2 years and upto 3 years from the date of joining duty. Moreover, unless the confirmation order is issued by the competent authority of the Institution, then it cannot be stated that the petitioner is confirmed automatically. When the confirmation was not given to the petitioner, then the Institution has every power to discharge the employee even after completion of 2 years but before 3 years.*



*3. The interpretation of the petitioner cannot be accepted. When the confirmation order is issued, then only the petitioner would become permanent employee. If the petitioner is discharged before confirmation, then it ought to be taken as discharge simpliciter. There cannot be any automatic confirmation on completion of two years. Therefore, this Court is of the considered opinion that the discharge is a simpliciter during probation. Therefore, this Court is of the considered opinion the petitioner has not raised any legally sustainable ground and hence the Writ Petition is liable to be dismissed.”*

9. On that ground, the learned Senior counsel pressed for dismissal of the writ petition.

10. Per contra the learned senior counsel Mr. Isaac Mohanlal appearing for the petitioner vehemently submitted that Bharathidasan Institute of Management was established by the Bharathidasan University and the same is a unit of the University. In addition to that, it is a school of excellence of the University. Like any other institution offering Management studies, the third respondent also has to get Extension of

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Approval (EOA) from the All India Council for Technical Education (AICTE), New Delhi every year. For getting Extension of Approval, the concerned institute has to mention the type of institution and the University under which it is affiliated with. Only those colleges established under the control of any University or the Government would mention the type of institute as Government/University Institution and all other private affiliated institutions will mention itself as Private aided/self financing institution. All along BIM is getting extension of approval from AICTE claiming it as an unit of the first respondent University and in the column for affiliating body, it is referred as not applicable. That itself makes it abundantly clear that the Institution is run by the first respondent University. It is only for the administrative convenience, the first respondent University itself formed a separate Society for running BIM.

11. Even in the impugned order of termination, the third respondent BIM has mentioned itself as the school of excellence of the Bharathidasan University. If the statement of the respondents 2 to 4 are accepted, the institution has to be termed as an unaffiliated institute and the degrees offered by the same will have to be treated as unrecognized

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degrees.

12.That apart the Society was formed as per the Statutes of the University and the University was funding the college entirely including payment of salary to the staffs of BIM. The very land owned by the Bharath Heavy Electrical Limited (BHEL) campus itself has been allotted for BIM. Once the institute started generating sufficient income, the institute is now being managed with its own fund. In case of any deficit fund, the first respondent University is under the obligation to extend its financial support. Since the third respondent BIM is an unit of the first respondent University, this petition is very well maintainable under Article 226 of Constitution of India.

13.Precisely BIM is an Institute which is an Authority under Article 12 of the Constitution. The Institute is being part and unit of the University and since the said unit of BIM has been founded by the first respondent University and the same carries the name of the University, the question of maintainability raised by the respondents goes

meaningless. On that basis, he pressed for proceeding with further arguments as to the merits of the case.

14.He further proceeded to submit that the impugned order in the writ petition is not termination simpliciter. It is an order attaching stigma and further when the impugned order is passed beyond the probation period of two years, it cannot be termed as termination simpliciter during the period of probation. The learned Senior counsel contended that the terms of appointment is very clear that the period of probation is only for two years. Even though the term of appointment states that the appointment will be confirmed only on satisfactory completion of probation, there is no clause for passing specific order for declaration of confirmation or for extension of probation beyond two years. Since no order terminating the service was passed within the period of two years, it shall be deemed as confirmation of service. He further submitted that the terms of appointment also makes it very clear that termination can be done only within the period of probation within two years and not beyond that. The University grants Commission Regulation 2010 and 2018 also makes it very clear that the confirmation of probation at the end of one

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year shall be automatic unless extended for another year by a specific order before expiry of first year. Once the period of two years is completed, the third respondent has no jurisdiction to terminate the writ petitioner as probationer without following the principles of natural justice.

15. In furtherance to the same, the third respondent BIM had used the terms that several complaints from the faculty and students have been received as against the writ petitioner and it is only in view of this irresponsible activities during probation period of two years, he came to be terminated. In that case, the impugned order of termination can never be termed as simpliciter. When the impugned orders of termination and relieving clearly establishes the foundation and motive behind the issuance, then the third respondent is bound to provide him with an opportunity of hearing, as to the basis on which such stigmatic order is passed.

16. He further contended that the fourth respondent has been

waiting for an opportunity to sack the writ petitioner out of the employment, since the writ petitioner belongs to scheduled caste community and the fourth respondent having proclaimed himself as Kshatriya. The candidates who have been recruited along with the writ petitioner being permitted to teach core subjects, the fourth respondent for the reasons best known to him, allotted the writ petitioner only to take electives and that itself revealed the malafide intention of the fourth respondent of not letting the writ petitioner to teach all the students. Even though the writ petitioner was appointed on 06.04.2021 and his period of probation is for two years and no classes were allotted for the whole of the year 2022, the fourth respondent targeted the writ petitioner by termination and relieving order only because he belong to scheduled caste community and other than the writ petitioner, there is no other faculty from scheduled caste community in BIM.

17. Even though the writ petitioner is Ph.D holder in Marketing and Marketing is taught as core subject, the fourth respondent with malafide intention has never allotted any class in core subjects to the writ petitioner. However, yet another Assistant Professor recruited along with

the writ petitioner without the qualification of NET/SLET/SET/PH.D has been permitted to handle core subjects and he is in service even now. When the writ petitioner's feedback was extremely high during the 4<sup>th</sup> Trimester in 37<sup>th</sup> batch, the 4<sup>th</sup> respondent again allotted the writ petitioner elective subject in 5<sup>th</sup> Trimester of 37<sup>th</sup> Batch and obtained feedback from almost 15 students of his choice to give 1/10 rating scale and threat and not allotted any classes throughout the year 2022. Having not allotted any class in the year 2022 after completion of six months from the completion 5<sup>th</sup> Trimester of 37<sup>th</sup> Batch, the fourth respondent's attitude of sending email communication dated 06.06.2022 stating the feedback as 4.5/10 is unacceptable. Since the impugned orders are tainted with malice, necessarily the respondents ought to have put the writ petitioner on notice and on that grounds alone, the termination cannot be claimed to be one as simpliciter and on that basis, pressed for allowing the writ petition.

18.Per contra the learned senior counsel Mr.Ajmal Khan appearing for the respondents 3 and 4 vehemently submitted that BIM is a separate autonomous body registered under the Tamil Nadu Societies Registration Act, 1975. None of the teaching and non teaching staffs of BIM were

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appointed by the first respondent University and there is no statutory provision to extend any financial support to BIM. In case of any fund deficit, the third respondent Institute being not sponsored, administrated and monitored either by the first respondent or by the State Government, AICTE or by the UGC, the same is not State/Authority in the meaning of Article 12 of Constitution of India. The service conditions of the writ petitioner is purely contractual in nature and not governed by statutory provision and hence, the Institution cannot be available for Writ jurisdiction and hence the Writ petition has to be dismissed on maintainability grounds itself. Since BIM cannot be stated as an authority to invoke the Writ jurisdiction of this Court, the service condition of the writ petitioner is governed by the Service Rules and Regulations of the BIM as approved by the Annual General Body Meeting held on 08.07.2010 by the Board of Governors.

19.Clause 17 of the said Service Rules reads that the Director/fourth respondent shall be the disciplinary authority in respect of all enquires and the Board of Governor shall be the appellate authority.

Likewise in the heading 'authority', it is specifically stated that the term



'Management' is meant to mean either the Board of Governors or Director of Institution or both as the context demands. That apart, the writ petitioner was appointed only by the third respondent and hence, the third respondent is very well within his competency to issue the impugned order. The question of malice in issuance of the impugned orders would never arise and the same is not without any basis but exclusively based on the feed back from the students and also various complaints from the various quarters. Even though he further submitted that the Institution is in practice of administering and obtaining course based feedback from the students at the end of each term and the feedback is shared with faculty only after the results are published to eliminate any bias. Thereafter, the feedback is obtained regarding the overall performance and perspective at the end of two year MBA Programme. The students feedback is administered through secret ballot usually before the examination and the feedback is completely anonymous and the students are prohibited from entering their names in the feedback forms. The feedback results in summary response and they share with the faculty only at the end of term when the results are published. Accordingly even though the probation period of the writ petitioner expired by April 2023, the Institute was in the

process of administering and analysing the feedback provided by the students. It was only after the term end, results were published in 2023 and thereafter the feedback was also published and soon thereafter, the impugned order came to be passed. Unbounded community and caste based remarks, which has been submitted by the writ petitioner in his reply counter affidavit is certainly an afterthought and has no iota of truth in it and pressed for dismissal of the writ petition.

20.The learned Senior counsel for the second respondent submitted that though BIM is an educational institution to invoke the jurisdiction under Article 226 of the Constitution, the Act complained of must have direct nexus with the discharge of public duty. Individual breach of mutual contracts which do not invoke any public element as its integral part cannot invoke writ jurisdiction under Article 226. BIM is a separate autonomous body having complete autonomy in all affairs, administrative, educational and financial and the same is independent of the first respondent University. Since the service condition of the writ petitioner is purely contractual in nature and not governed by any statutory provision, BIM is not available to writ jurisdiction.

21.The contention of the writ petitioner is that the impugned orders are tainted with malice is untenable and the submission of the writ petitioner that the same has been issued by the fourth respondent without jurisdiction is also incorrect. The Director of the Institution is the competent authority to deal with confirmation of probation and termination as well. Though malafide is alleged, there is no iota of evidence to prove the same. The allegation of caste discrimination which was not written up in the writ affidavit has been brought in by the writ petitioner in his reply affidavit as an after thought. It is highly improper and condemnable to rake up a caste issue for the purpose of the present litigation and merely because the Institution has passed an order of termination simpliciter. The allegation of caste bias has been taken up as a shield that too without any iota of truth or basis and concluded seeking dismissal of the writ petition.

***Analysis:-***

22.The point to be decided in this case are as follows:-

(I) Whether this writ petition is liable to be dismissed on the question of maintainability ?

(II) Whether the impugned termination order and consequential relieving order dated 07.07.2023 is a termination simpliciter during probation ?

(III) Whether the impugned termination order and consequential relieving order is vitiated by malafides ?

(IV) Whether the impugned termination order and consequential relieving order has been issued violating the statues of BIM and principles of natural justice ?

***(I) Whether this writ petition is liable to be dismissed on the question of maintainability :-***

23.Section 2k of the laws of Bharathidasan University defines School of Excellence as follows:-

*“School of excellence' means an institution, governed by a separate Board of Governors and registered under*

*Societies Registration Act, sponsored by and affiliated to the University for Postgraduate Study and Research.”*

24.The function of Bharathidasan Institution of Management as per the Memorandum of Association in Clause g(v) mandates to maintain a fund to which all the moneys provided by the University, Central and State Governments shall be credited. Clause g(ix) mandates to forward annually to the Bharathidasan University and the State Government through the University, the accounts of the BIM Society as certified by an auditor appointed by the Board of Governors of the Institution. The Rules of the BIM Society in its definition Clause in Rule (c) defines 'University' as 'University' shall mean the Bharathidasan University and State Government shall mean the Government of Tamil Nadu. Rule 25 of BIM Society mandates that the memorandum and bylaws of BIM shall be amended by a special resolution subject to the prior approval of the Bharathidasan University and without prejudice to the general powers of the Society and the University. Rule 10 of the BIM mandates that his Excellency Governor of Tamil Nadu (Chancellor of the Bharathidasan

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University) shall be the Honorary patron in Chief of the Society. That apart his Excellency, the Governor of Tamil Nadu Chancellor of Bharathidasan University would be the Honorary patron in Chief of the Board of Governors of BIM. The policy note of the higher education Department of the Government of Tamil Nadu has recorded that Bharathidasan University besides the main campus at Palkalaiperur and City campus at Kajamalai as Bharathidasan Institution of Management located at Tiruverumbur.

25.From the above details, it is crystal clear that BIM is the school of Excellence/Institution of Bharathidasan University, though governed by a separate Board of Governor and registered under Societies Registration Act. The same is the unit of the Bharathidasan University affiliated to the Bharathidasan University for Post Graduate, Study and Research. On the maintainability aspect, both the counsels for the writ petitioner and that of the respondents relied upon various orders/judgments.

26.The learned counsel for the petitioner relied upon the case of **Janet Jeyapaul v. SRM University and others** reported in **(2015) 16 Supreme Court Cases 530** and the relevant portion of which is extracted as follows:-

“16. Pointing out from various well known English commentaries such as *De Smith's Judicial Review, 7th Edition, H.W.R.Wade and C.F. Forsyth Administrative law, 10th Edition, Michael J. Beloff in his article Pitch, Pool, Rink,.....Court? Judicial Review in the Sporting World, 1989 Public Law 95, English decisions in Breen vs. A.E.U. (1971) 2 QB 175, R. vs. Panelyon Take-overs and Mergers, ex parte Datafin Plc and another (Norton Opax Plc and another intervening) (1987) 1 All ER 564, E.S. Evans vs. Charles E. Newton 382 US 296 (1966) and of this Court in Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust & Ors. vs. V.R. Rudani & Ors., (1989) 2 SCC 691 and Zee Telefilms Ltd. vs. Union of India (2005) 4 SCC 649, Mr. Harish Salve submitted that perusal of these authorities/decisions would go to show that there has been a consistent view of all the learned authors and the Courts all over the world including in India that the approach of the Court while deciding such issue is always to test as to whether the concerned body is formed for discharging any "Public function" or "Public duty" and if so, whether it is*

*actually engaged in any public function or/and performing any such duty.*

*17. According to learned counsel, if the aforesaid twin test is found present in any case then such person/body/organization/authority, as the case may be, would be subjected to writ jurisdiction of the High Court under Article 226 of the Constitution.*

*18. Learned senior counsel elaborated his submission by pointing out that the expression "any person or authority" used in Article 226 are not confined only to statutory authorities and instrumentalities of the State but may in appropriate case include any other person or body performing "public function/duty". Learned counsel urged that emphasis is, therefore, always on activity undertaken and the nature of the duty imposed on such authority to perform and not the form of such authority. According to Mr. Harish Salve, once it is proved that the activity undertaken by the authority has a public element then regardless of the form of such authority it would be subjected to the rigor of writ jurisdiction of Article 226 of the Constitution.*

*19. Learned counsel then urged that in the light of several decisions of this Court, one cannot now perhaps dispute that "imparting education to students at large" is a "public function" and, therefore, if any body or authority, as the case may be, is found to have been engaged in the activity of imparting education to the students at large then irrespective of the status of any such*



*authority, it should be made amenable to writ jurisdiction of the High Court under [Article 226](#) of the Constitution.*

*30. This we say for the reasons that firstly, respondent No. 1 is engaged in imparting education in higher studies to students at large. Secondly, it is discharging "public function" by way of imparting education. Thirdly, it is notified as a "Deemed University" by the Central Government under Section 3 of the UGC Act. Fourthly, being a "Deemed University", all the provisions of the UGC Act are made applicable to respondent No. 1, which inter alia provides for effective discharge of the public function - namely education for the benefit of public. Fifthly, once respondent No. 1 is declared as "Deemed University" whose all functions and activities are governed by the UGC Act, alike other universities then it is an "authority" within the meaning of [Article 12](#) of the Constitution. Lastly, once it is held to be an "authority" as provided in [Article 12](#) then as a necessary consequence, it becomes amenable to writ jurisdiction of High Court under [Article 226](#) of the Constitution. ”*

27. Per contra the learned counsel for the respondents relied upon the case of ***St.Mary's Education Society and another v. Rajendra Prasad Bhargava and Others*** reported in ***2022 SCC online SC 1091*** and

the portion relevant of this case is extracted as follows:-  
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*“75.2. Even if it be assumed that an educational institution is imparting public duty, the act complained of must have a direct nexus with the discharge of public duty. It is indisputably a public law action which confers a right upon the aggrieved to invoke the extraordinary writ jurisdiction under [Article 226](#) for a prerogative writ. Individual wrongs or breach of mutual contracts without having any public element as its integral part cannot be rectified through a writ petition under Article 226. Wherever Courts have intervened in their exercise of jurisdiction under [Article 226](#), either the service conditions were regulated by the statutory provisions or the employer had the status of “State” within the expansive definition under [Article 12](#) or it was found that the action complained of has public law element.*

*75.3. It must be consequently held that while a body may be discharging a public function or performing a public duty and thus its actions becoming amenable to judicial review by a Constitutional Court, its employees would not have the right to invoke the powers of the High Court conferred by [Article 226](#) in respect of matter relating to service where they are not governed or controlled by the statutory provisions. An educational institution may perform myriad functions touching various facets of public life and in the societal sphere. While such of those functions as would fall within the domain of a "public function" or "public duty" be undisputedly open to*

*challenge and scrutiny under Article 226 of the Constitution, the actions or decisions taken solely within the confines of an ordinary contract of service, having no statutory force or backing, cannot be recognised as being amenable to challenge under Article 226 of the Constitution. In the absence of the service conditions being controlled or governed by statutory provisions, the matter would remain in the realm of an ordinary contract of service.*

*75.4 Even if it be perceived that imparting education by private unaided the school is a public duty within the expanded expression of the term, an employee of a nonteaching staff engaged by the school for the purpose of its administration or internal management is only an agency created by it. It is immaterial whether “A” or “B” is employed by school to discharge that duty. In any case, the terms of employment of contract between a school and nonteaching staff cannot and should not be construed to be an inseparable part of the obligation to impart education. This is particularly in respect to the disciplinary proceedings that may be initiated against a particular employee. It is only where the removal of an employee of nonteaching staff is regulated by some statutory provisions, its violation by the employer in contravention of law may be interfered by the court. But such interference will be on the ground of breach of law and not on the basis of interference in discharge of public duty.*

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*75.5. From the pleadings in the original writ petition, it is apparent that no element of any public law is agitated or otherwise made out. In other words, the action challenged has no public element and writ of mandamus cannot be issued as the action was essentially of a private character.”*

28. However, the case relied by the learned Senior Counsel for the respondents is with respect to a case filed by an employee of private unaided educational Institution in the matter of disciplinary proceedings initiated against the said office employee. In the instant case, the Institution involved is Bharathidasan Institution of Management which is an unit of Bharathidasan University, to which the Governor of Tamil Nadu is the Chancellor. That apart the Hon'ble Governor of the State of Tamil Nadu is the Honorary Patron in Chief of the Board of Governors of BIM. In addition to that, BIM is a school of excellence, which is sponsored by and affiliated to the Bharathidasan University for post Graduate Study and Research. Certainly BIM is engaged in imparting education in higher studies to students at large and thereby, discharging "public function by way of imparting education". Pertinently it is a school of excellence affiliated to the Bharathidasan University in terms of

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Section 2k of the laws of Bharathidasan University. BIM provides for effective discharge of public function namely, education for the benefit of the public. Hence, it is certainly an Authority within the meaning of Article 12 though not state which is coupled with the public duty of imparting education. Precisely I hold that BIM is an Authority as provided under Article 12 and it becomes amenable to the writ jurisdiction of this Court under Article 226 of Constitution.

***(II) Whether the impugned termination order and consequential relieving order dated 07.07.2023 is a termination simpliciter during probation :-***

29.For Clarity, the impugned termination order dated 07.07.2023 is extracted as follows:-

*“BIM/TS/RB/2023 dated 07.07.2023.*

*To*

*Dr.C.N.S.Ramnath Babu,*

*Assistant Professor,*

*BIM, Trichy.*

*Sir,*

*Sub: BIM Teaching Staff – Dr.C.N.S.Ramnath Babu,  
Asst. Professor – Terminated from BIM Service – Intimated*

*Greetings from BIM Trichy,*

*You were appointed as Asst Professor BIM Society, Trichy and joined on the FN of April 16, 2021. During your probation period of two years, your work and performance are not satisfactory. Even though I have warned you several times and yet there has not been any tangible improvement in your teaching activities. Further, I received several complaints from faculty and students.*

*In view of your irresponsible activities during the probation period of two years, I feel you had not satisfactorily completed the probation period and hence, it is hereby ordered that you are not fit to hold the post of Assistant Professor at BIM. Hence, you are relieved permanently from the position of Asst Professor at BIM Society on the afternoon of July 07, 2023. You are further informed that instead of giving one month notice pay per your appointment order, three months salary will be credited to your account.*

*DIRECTOR”*

30.The consequential relieving order is extracted as follows:-

*“July 07, 2023*

*Dr.C.N.S.Ramnath Babu,*

*Assistant Professor,*

*BIM, Trichy.*

*Dear Dr.Ramnath Babu,*

*Sub: BIM Teaching Staff – Dr.C.N.S.Ramnath Babu,  
Asst Professor – Terminated from BIM Service – Intimated*

*Greetings from BIM Trichy.*

*You were appointed as an Assistant Professor at BIM Society, Tiruchirappalli, and you joined on the FN of April 16, 2021. During your probation period of two years, your work and performance have not been satisfactory.*

*Hence, we are not confirming you role as an Assistant Professor at BIM Tiruchirappalli, and you are relieved from the position of Assistant Professor (on probation) at BIM Society on the afternoon of July 07, 2023. You are further informed that instead of giving one-month notice pay per your*

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*appointment order, three months' salary from today (that includes the one-month notice pay) will be credited to your account. You may contact the administration office for necessary clearance and handing over.*

*Wishing you all the best in your future career.*

*Director”*

31.A critical perusal of the impugned termination order and subsequent relieving order arises the following points for consideration:-

(i)The same has been issued by the Director of BIM/fourth respondent.

(ii)The impugned termination order has been sent to the writ petitioner through mail by the fourth respondent.

(iii)The impugned consequential relieving order has emanated from desk of the Director of the BIM (school of excellence of Bharathidasan University)/4<sup>th</sup> respondent

(iv)In view of the unsatisfactory work and performance of the writ petitioner during his probation period of two years, in view of receipt of



several complaints from faculty and students, despite the warning of the Director several times, the absence of any tangible improvement in the teaching activities and irresponsible activities of the writ petitioner has culminated in the issuance of the said termination order.

(v) In view of the above observation, the Director has concluded that the writ petitioner is not fit to hold the post of Assistant Professor at BIM and has relieved him permanently from the position of Assistant Professor on the afternoon of July 7, 2023.

(vi) Instead of giving one month notice pay as per appointment order to the writ petitioner, three months salary has been credited to the account of the writ petitioner.

32. Can a termination order couched with several observations as described above be termed as termination simpliciter? An order of termination simpliciter need to be without any allegation except with the observation that the employee's work and performance during probation was not satisfactory. Once the same is entangled and encrypted by several allegations against the employee/probationer, then it is necessary that the

employee has to be put on notice for giving a proper opportunity of hearing.

33.The writ petitioner was appointed as Assistant Professor in BIM by issuance of an offer of appointment by the fourth respondent on the basis of the recommendation of the Faculty Selection Committee on 12.03.2021. The terms and conditions of the said appointment order is extracted as follows:-

*“Terms and Conditions: -*

*1.You will be placed in the levell 11. An illustrated calculation of the pay is given in Annexure.*

*2.You will be appointed on probation for a period of two years and will be confirmed only on satisfactory completion of probation.*

*3.During the probation period, the appointment may be terminated by either side by giving one month's notice or one month's salary in lieu thereof.*

*4.You will be governed by the workload norms as prescribed by the Institute.*

*5.You will be governed by the service rules and regulations of the Institute, as amended from time to time.”*

34.That apart the offer of appointment has been issued in the name of the Director/fourth respondent and a perusal of the same would reveal that the said offer has been made by the Director/fourth respondent on behalf of the Board of Governors from the words "we are pleased to offer you faculty position of Assistant Professor in the Bharathidasan Institute of Management, Thiruchirappalli".

35.Rule 28 of the BIM deals with powers and function of Board of Governors. Rule 28(IX) is as follows:-

*“To create teaching, administrative, technical, ministerial and others posts under the Society and to make appointments thereto, fix salaries and other service conditions for the efficient management of the affairs of the Institute and to regulate the recruitment, conditions of service and control of staff”*

36.Hence, it is clear that the competent authority to make an  
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appointment, regulate the recruitment, conditions of service and control of staff and termination of employees vests with the Board of Governors not with the Director of BIM/fourth respondent that is why the offer of appointment has been issued by the Director/fourth respondent on behalf of the Board of Governors on the recommendation of Faculty Selection Committee of the Board. But both the impugned termination order and the consequential relieving order has emanated from the desk of the Director and conspicuously, it is clear that the same has been issued without the concurrence and consultation of the Board of Governors of BIM. It is pertinent to bring on record, the service rules and regulations of BIM and to quote Rule 2 of the same, which reads as follows:-

*“2.Authority:- The Institute is wholly administered by Board by Governors of Bharathidasan Institute of Management and the Management reserves its rights to alter or amend or repeal or annul any or all of the rules and regulations. The term 'Management' is used hereafter in this document to mean either the Board of Governors or Director of the Institute or both as the context demands.”*

37.Rule 17 of Rules and Regulations of BIM is extracted as

follows:-

*17.Disciplinary proceedings and Grievance Procedure:*

*Violation of any of the above rules/regulations in force and are to be framed and implemented from time to time shall entail termination of service/dismissal.*

*9.9.The Director shall be the Disciplinary Authority in respect of all enquiries and the Board of Governors shall be the Appellate Authority.*

*9.10.Any employee aggrieved by the order of the Disciplinary Authority may prefer an appeal to the Appellate Authority within 30 days from the date of the order of the Disciplinary Authority.*

*9.11.If an enquiry is deemed necessary, an Enquiry Committee shall be appointed by the Board of Governors or the Disciplinary Authority who shall conduct the proceedings of the enquiry and submit the report to the Disciplinary Authority or the Board of Governors as the case may be.”*

38.Though the learned senior counsel for the respondents 3 and 4 vehemently relying upon Rule 17(9.9), submitted that the Director being the disciplinary authority in respect of all enquiries, he who is the

competent authority shall entail termination of service/dismissal for violation of any of the rules/regulations of BIM in force. However, considering the fact that in terms of Rule 2, the Board of Governors of BIM is the Authority, who administers BIM and this case as put forth by the respondents, if the same is a case of termination simpliciter then the question of a Director acting as disciplinary authority will not arise and it is only the Board of Governors which is the competent authority to issue an order of termination simpliciter. On the other hand, if the same is a disciplinary proceeding as against the writ petitioner, in that case, the fourth respondent ought to have followed the mandates of principles of natural justice of giving appropriate opportunity to the writ petitioner. Since this is not a case of disciplinary proceeding but a termination passed on a probationer, the Director has no role to play in it. If the same is a disciplinary proceeding, then it could have been in accordance with law. Even if it is a disciplinary proceedings if an enquiry is deemed necessary, it is only the Board of Governors who could appoint an Enquiry Committee for the conduct of enquiry. Without following any of the procedure mandated by the service rules and regulations of BIM for conduct of disciplinary proceedings, the contention of the learned Senior

Counsel for the respondents 3 and 4 that the Director being disciplinary authority is the competent authority to issue termination order has to be rejected.

39.I have no hesitation to hold that this is not a case of disciplinary proceedings but a termination simpliciter passed by the fourth respondent innocuously. Period of probation of the writ petitioner would complete on the completion of two years from the date of offer of appointment on 16.04.2023 and he was permitted to continue in service for two months and 22 days till 07.07.2023 as the Assistant Professor of BIM.

40.The learned Senior Counsel for the petitioner categorically stated that the probation beyond two years would amount to deemed confirmation of service.

41.However, the learned counsel for the respondents submitted that this is case where a maximum period of two years is specified in the

terms and conditions of the offer of appointment, with a clause insisting that the incumbent will be confirmed only on satisfactory completion of probation. In such factual background, even if the maximum period of two years has expired, he cannot be deemed to have been confirmed merely because the said period has expired and hence under such condition, there is no bar to terminate at any point of time even after the expiry of the period of probation because the probationer cannot acquire the status of a permanent member of a service automatically after the expiry of probation period unless explicitly confirmed by the employer. The probation aspect is always governed by rules. If the rules require express confirmation of probation then once probation is completed, the same should be confirmed expressly. If the rules are silent then on the completion of two years, probation will be completed.

42. In the case in hand, rules on probation is silent and the terms and conditions of offer of appointment in Clause 2 makes it clear that the probation period is only for a period of two years and Clause 3 makes it clear that the appointment may be terminated by giving one month notice or one month salary in lieu thereof only during the probation period. That

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apart Clause 5 of terms and conditions mandates that the writ petitioner will be governed by the service rules and regulations of the Institute as amended from time to time. Once the period of two years is completed, then the service of the writ petitioner will be automatically governed by the service rules and regulations of the Institute and an order of termination could be issued as against the writ petitioner only in terms of Rule 17(9.9) of service rules and regulations of the BIM. A termination simpliciter could be made only during the probation period i.e., within the period of two years without assigning any reasons exclusively on the reason that the service of probationer is not satisfactory.

43.However, in the case in hand, having allowed the writ petitioner to complete probation period of two years, in the name of termination simpliciter, the third respondent has exercised the power of termination violating the mandates of service rules and regulations and has issued an order of termination without jurisdiction. **The vital thing in service jurisprudence is that the integrity of the employee even while issuing a termination order is of paramount importance.** What is required for completion of probation is without stigma. Had the service of the writ

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petitioner been unsatisfactory to the Board of Governors, then what is required is termination of the writ petitioner on the grounds of unsatisfactory service alone and the other indications especially with respect to the complaints received from the faculty and the students and the terminology of irresponsible activities and warning given to the writ petitioner would attract punitive action and the same would render the termination order insinuating and stigmatic. The writ petitioner who has already completed the age of 49 who has been terminated without being given with an opportunity of hearing by means of a blanket termination order, which is stigmatic would amount to camouflaged exercise of power and will have destructive impact on the future livelihood and employment prospects of the writ petitioner. Having mentioned about the various complaints received from the faculty and students and the situation warranting warning the writ petitioner several times and the mentioning of the irresponsible activities of the writ petitioner in the termination order certainly the proper way of exercising the power of initiating action against the writ petitioner is that the third respondent ought to have placed the case of the writ petitioner before the Board for appropriate direction. That exercise not being made, the entire exercise of issuance of

termination in the name of termination simpliciter, which has emanated from desk of the Director without jurisdiction is totally vitiated and the same is *per se* illegal.

44.To conclude, I have not hesitation to hold that the impugned order of termination and the relieving order is a stigmatic order issued without application of mind.

***(III) Whether the impugned termination order and consequential relieving order is vitiated by malafides :-***

45.The impugned order of termination and consequential relieving order which has emanated from the desk of Director/fourth respondent is encrypted with several allegation. Once it is couched with various allegation certainly, the third respondent ought to have appended the same with supporting documents. Having not done that, I have no hesitation to hold that said of issuance of impugned orders is certainly vitiated by malafide.

***(IV) Whether the impugned termination order and consequential relieving order has been issued violating the statues of BIM and principles of natural justice:-***

46.The learned counsel for the petitioner relied upon the following orders/judgments:-

(I)***Dr.E.Johnson and two others v. Member Secretary*** reported in ***2002 (4) CTC 65***;

(ii)***Member Secretary, Salim Ali Center for Ornithology and Natural History and another v. Dr.C.P.Geevan*** reported in ***2010 SCC Online Mad 2068***;

(iii)***Janet Jeyapaul v. SRM University and others*** reported in ***(2015) 16 Supreme Court Cases 530***;

(iv)***Marwari Balika Vidyalaya v. Asha Srivastava and others*** reported in ***(2020) 14 Supreme Court Cases 449***;

(v)*St.Mary's Education Society and another v. Rajendra Prasad Bhargava and others* reported in *2022 SCC online SC 1091*;

47.The learned counsel for the respondents relied upon the following orders/judgments:-

(i)*St.Mary's Education Society and another v. Rajendra Prasad Bhargava and others* reported in *(2023) 4 SCC 498*;

(ii)*Dr.S.N.Tripati v. State of U.P.* reported in *(2010) SCC Online All 1965*;

(iii)*State of U.P. v. Akbar Ali Khan* reported in *(1966) 3 SCR 821*;

(iv)*Director, Aryabhata Research Institute of Observational Sciences (Aries) and another v. Devendra Joshi and others* reported in *(2018) 15 SCC 73*;

(v)*Head Master, Lawrence School, Lovedale v. Jayanthi Raghu and another* reported in *(2012) 4 SCC 793*;

(vi)*Commissioner of Police, Hubli and another v. R.S.More*

reported in **(2003) 2 SCC 408**;

(vii)**Kunwar Arun Kumar v. U.P. Hill Electronic Corporation Ltd., and others** reported in **(1997) 2 SCC 191**;

(viii)**State of Punjab and others v. Bhagwan Singh** reported in **(2002) 9 SCC 636** ;

(ix)**Chandra Prakash Singh and others v. Chairman, Purvanchal Gramin Bank and others** reported in **(2008) 12 SCC 292**;

(x)**Dr.D.Latha Kumari v. Secretary to Government and others** in **W.P.(MD)No.16362 of 2017**;

(xi)**The State of Punjab and others v. Jaswant Singh** in **Civil Appeal No.11871 of 2014**;

48.The Hon'ble Apex Court in the case of **Abhijit Gupta v. S.N.B.National Centre and others** reported in **(2006) 4 Supreme Court Cases 469** has dealt with the case of termination simpliciter and relevant portion is extracted as follows:-

*“4.On 20th November 1995 the appellant was served with a letter informing him that his performance during the probationary period was "far from satisfactory" and that it had been observed that he lacked drive, imagination and initiative 'in the performance of his duties'. He was informed that, despite being told time and again to improve performance in the said areas, but with no effect. He was advised to improve "in order to enable us to consider your case for confirmation favourably". He was issued several such letters drawing his attention to the fact that his services left much to be desired. His probationary service came to be extended from time to time, the last such extension being granted till 9th April 1998. Finally, by the letter dated 7.4.1998 the petitioner was informed that his service was "unsatisfactory in the areas of drive, initiative, promptness and leadership" and that despite advised verbally and through letter, what were deficiencies in his work he had shown no improvement. His attendance, office work and attention to the academic work and the affairs of the guest house were also unsatisfactory. The first respondent, therefore, said "your performance, ability and capability during the period of probation has been examined and your service during the period of probation is found to be unsatisfactory and hence you are considered unsuitable for the post you have to. The governing body is of the view that your performance was unsatisfactory and you are not suitable for confirmation". For*

these reasons the appellant's probationary period was not extended on the expiration of his probation period on 9th April 1999 without further extension.

14.The real test to be applied in a situation where an employee is removed by an innocuous order of termination is: Is he discharged as unsuitable or is he punished for his misconduct?¶In Allahabad Bank Officers' Association and another vs. Allahabad Bank and others¶(1996) 4 SCC 504, this Court was considering a challenge to a compulsory retirement and formulated a practical test to answer the question posed above. This Court (vide para 17) observed that if the order of compulsory removal from the service casts a stigma in the sense that it contains a statement casting aspersion on his conduct or his character, then it can be treated as an order of punishment but not if it merely amounts to highlighting the unsuitability of the employee. As pointed out in this judgment, expressions like "want of application", "lack of potential" and "found not dependable" when made in relation to the work of the employee would not be sufficient to attract the charge that they are stigmatic and intended to dismiss the employee from service.”

49.The Hon'ble Apex Court in the case of **State of UP v. Akbar Ali**



**Khan** reported in (1966) 3 SCR 821 while dealing with termination during probation has held as follows:-

*“The scheme of the rules is clear : confirmation in the post which a probationer is holding does not result merely from the expiry of the period of probation, and so long as the order of confirmation is not made, the holder of the post remains a probationer. It has been held by this Court that when a first appointment or promotion is made on probation for a specified 2Sup. CI/66-7yperiod and the employee is allowed to continue in the post, after the expiry of the said period without any specific order of confirmation he continues as a probationer only and acquires no substantive right to hold the post. If the order of appointment itself states that at the end of the period of probation the appointee will stand confirmed in the absence of any order to the contrary, the appointee will acquire a substantive right to the post even without an order of confirmation. In all other cases, in the absence of such an order or in the absence of such a service rule, an express order of confirmation is necessary to give him such a right. Where after the period of probation an appointee is allowed to continue in the post without an order of confirmation, the only possible view to take is that by implication the period of probation has been extended, and it is not a correct proposition to state that an appointee should be deemed to be confirmed from the mere fact that he is allowed to continue after the end of the period of*

probation.”

50.This Court in the case of **Dr.E.Johnson and two others v. Member Secretary** reported in **2002 (4) CTC 65** while dealing with termination during probation and the relevant portion of which is extracted as follows:-

*“29. Learned Additional Advocate General next advanced his argument that it is the Governing Council which considered the overall performance of the petitioners during the period of probation, and that since their performance was not found to be satisfactory during the said period, the Governing Council rightly took a decision to extend the probation of the petitioner in the first writ petition by six months and terminate the services of the petitioners in the other two writ petitions. It is true that even under law services of a probationer may be terminated after making over all assessment and during the period of probation and no notice is required before terminating his services. It is also settled law that if the performance of the employee concerned during the period of probation is not found to be satisfactory on over all assessment, then it is open to the competent authority to terminate his services. In this regard, it is relevant to note a*

*decision of the Apex Court in Chandra Prakash Shahi v. State of U.P., reported in AIR 2000 Supreme Court 1706 wherein Their Lordships have held that the question whether the order by which the services were terminated was innocuous or punitive in nature had to be decided on the facts of each case after considering the relevant facts in the light of the surrounding circumstances. In the cases on hand, I have already referred to the involvement of the petitioners in raising objections against the second respondent, particularly after the death of Dr. Davies Frank Singh in tragic circumstances on 22/23rd May, 1995. In the absence of any counter affidavit controverting those specific averment, the surrounding circumstances asserted in the affidavit of the petitioners cannot be ignored while testing the impugned orders. As discussed above, if we apply the surrounding circumstances, as specifically asserted in the affidavit, the same not being controverted by way of counter affidavit, it leads to an irresistible conclusion that the impugned order caused stigma against the petitioners in W.P.Nos. 1784 and 1842/96 and undoubtedly, it is punitive in character, more particularly when they were not given opportunity to put-forth their views. Accordingly, I accept the second contention advanced by the learned senior counsel for the petitioners.”*

51. For the fair appreciation of facts in issue and the applicable statutes of BIM in testing the validity of the impugned termination and relieving orders of the writ petitioner from the post of Assistant Professor during probation, it is quite certain that even if his service is unsatisfactory, the power of termination has to be exercised only by the Board of Governors of BIM that too without causing stigma on the probationer and the order of termination necessarily has to be addressed positively attributing to the fact that his service has been far from what was expected from him in the capacity of Assistant Professor in the performance of his duty. If the order of termination is tilted in such a way as to point out specific irregularities/illegalities warranting enquiry even if it is a case of the probationer then the said order of termination would be considered innocuous or punitive in nature. Once the termination order becomes innocuous or punitive in nature, in character, in such a case, it is necessary to give an opportunity of hearing, even if it is a probationer. In the instant case though the offer of appointment specifies the period of probation as two years unless explicitly confirmed by an order of Board of Governors of BIM, the writ petitioner's service shall not be deemed to be confirmed on completion of two years probation period. Though the

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writ petitioner was allowed to serve a period of two months 22 days till 07.07.2023 beyond the period of completion of probation of two years that could be considered as an extension of probation only not as confirmation of his service in the post of Assistant Professor but at the same time, the impugned orders are bad and *per se* illegal since the same has emanated from the desk of Director/third respondent contrary to the Service Rules of BIM as discussion supra.

52.Though the writ petitioner has raised the angle of caste discrimination on being a scheduled caste probationer by the third respondent/Director who belongs to Kshtriya caste, the same is negated by this Court, since the same was pleaded only an afterthought in the reply affidavit to the counter affidavit of the respondents by the writ petitioner. However, the allegations of various complaints from the students and faculty and allegations of the writ petitioner's irresponsibility cited in the termination order ought to have been placed before the Board of Governors for appropriate decision. Even if the Board of Directors conclude to terminate the petitioner, the same ought not to have been stigmatic.

53.In view of the same, this Court hereby quash the impugned order of termination and consequential relieving order dated 07.07.2023 on the ground of jurisdiction alone and thereafter, remand back the matter to the third respondent with the following directions:-

(i)The third respondent is directed to place the case of the writ petitioner before the Board of Governors for appropriate action.

(ii)In case the Board of Governors decide to terminate the writ petitioner appropriate opportunity of hearing should be given to the writ petitioner to explain the allegations put forthwith against him by the third respondent along with supporting documents.

(iii)The Board of Governors while deciding the case of the writ petitioner should keep in mind the past professional experience of the writ petitioner, present age of the writ petitioner, family circumstances and future employment prospects of the writ petitioner.

(iv)In case of arriving at conclusion to terminate the writ petitioner after giving him due opportunity in accordance with law, the order of termination should not be stigmatic.

54.Accordingly, the Writ Petition stand disposed. There shall be no order as to costs. Consequently connected miscellaneous petitions are closed.

**02.11.2023**

NCC : Yes / No  
Index : Yes / No  
Internet : Yes  
Mrn

**L.VICTORIA GOWRI, J.**

Mrn

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