Supreme Court of India
Regina vs St. Aloysius Higher Elementary ... on 16 March, 1971
Equivalent citations: 1971 AIR 1920, 1971 SCR 6
Author: Shelat
Bench: Shelat, J.M.

PETITIONER:
REGINA

Vs.

RESPONDENT:
ST. ALOYSIUS HIGHER ELEMENTARY SCHOOL & ANR.

DATE OF JUDGMENT16/03/1971

BENCH:
SHELAT, J.M.
BENCH:
SHELAT, J.M.
VAIDYIALINGAM, C.A.

CITATION:
1971 AIR 1920 1971 SCR 6
1972 SCC (4) 188

ACT:
Madras Elementary Education Act (8 of 1920), s. 56(2) (h) and Part II, Rules--If statutory Rules or administrative instructions--Purpose of Rules--Right of teacher against management of Elementary School--If governed by contract or Rules.

HEADNOTE:
The appellant, who was working as the Headmistress in the respondent school was reduced to the position of an Assistant Teacher. Her appeal to the District Educational Officer under. 13(2)(vi) of Part 11 of the rules published by the State Government in the Gazette on August 29 1939, was rejected, but on a further appeal by her to the Divisional Inspector of Schools, the management of the school was directed to restore her to the position of Headmistress. As the management did not do so, she filed a suit for the issue of a mandatory injunction to the respondent and for damages.
On the question whether the rules under which the appeal was filed and the order was made were only administrative instructions by the Government to its educational officers and not statutory rules which would give rise to a remedy enforceable at law at the instance of an employee of a

school aggrieved against the management,

HELD: (1) Section 56 of the Madras Elementary Education Act, 1920, authorized the Government to make rules to 'carry out all or any of the purposes of this Act', and under sub-s. 2(h) for declaring the conditions subject to which schools may be admitted to recognition or aid, and rules were framed in 1922. The Act was amended by Amendment Act of 1939, by which Chs. 11, IV, VI and s. 55 were deleted. The existing rules therefore could not be continued as they could not be regarded as rules for 'carrying out the purposes of the Act.' Hence they were reframed and published in the Gazette in 1939 in two parts. [13F, H; 14D].

(a) The first part contained rules dealing with matters provided for in the various sections. The rules in Part II could not refer to any section because, they related to matters such as recognition and aid dealt with in sections and Chapters which were repealed by the 1939-amendment, and hence, Part II rules did not set out or refer to any section of the Act. [14E].

(b) The rules in Part I were headed 'Rules framed under the Madras Elementary Education Act, 1920', but the Rules in Part 11 were not given any such heading or title. [14F].

(c) There was no previous publication of the rules in Part 11 as required by s. 56(1). [14F-G].

(d) The rules in Part 11 could not be claimed to have been made under s. 56(2) (h) dealing with the conditions subject to which schools may be admitted to recognition or aid, because they did not satisfy the condition precedent for such rule-making, namely, that they could be made only 'to carry out all or any of the purposes of the Act', [16D-F].

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Therefore, the rules in Part 11 could not be said to be statutory rules framed under s. 56. [16F]

(2) But the Government had the power de hors the Act to lay down conditions under which it could recognise and grant aid. To achieve uniformity and certainty in the exercise of such executive power and to avoid discrimination, Government could frame rules which would however only be administrative instructions to its officers. [17B-D]

The rules in the present case, relating to recognition and aid, thus governed the terms on which Government would grant recognition and aid and Government could enforce the rules on the management by the denial or withdrawal of such recognition or aid, if there was a breach or noncompliance of the conditions laid down in the rules. But the enforcement of such rules was a matter between the Government and the management, and a third party, such as a teacher aggrieved by same order of the management, could not derive from the rules any enforceable right against the management on the grounds of a breach of or non-compliance with any of the rules. [17D-E; 19B-C]

(3) The relation between the management of the elementary school and the teachers employed in it would be governed by

the terms of the contract of employment and the law of master and servant in the absence of any statute or statutory rules controlling or abrogating such a contract and providing to the contrary. [16F-G]
The result is that the relations between the managements and the teachers even in a recognised elementary school have to be regarded as being governed by the contracts of employment and the terms and conditions contained therein. Part II Rules, which cannot be regarded ,is having the status of statutory rules made under s. 56 cannot be said to have the effect of controlling the relations between the management of a school and its teachers. [16H; 17A-B]
Therefore, the appellant could not be said to have had a cause of action for enforcing the directions given by the Divisional Inspector to restore her as the Headmistress in the appeal filed by her. Appeals against orders passed by the management against a teacher are provided for under r. 13 so as to enforce the satisfaction of conditions under which recognition and aid would be granted or withdrawn, and not for regulating as between the teacher and the management, the relations of master and servant arising under the contract of employment. [18B-C]
Chandrasekharan Nair v. Secretary to Government of Kerala, A.I.R. 1965 Ker. 303, A. Ramaswami Ayyangar v. State of Madras, (1962) 1 M.L.J. 269, and Moss. v. The Management, (1970) 2 A.W.R. 157, approved.
Govindaswami v. Andhra, (1962) (1) An. W. R. 283, overruled

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 500 of 1966. Appeal by special leave from the judgment and order dated July 27, 1965 of the Mysore High Court in Second Appeal No. 235 of 1960.

B. R. L. Iyengar and E. C. Agrawala, for the appellant. R. Gopalakrishnan, for the respondent.

The Judgment of the Court calling for a report was delivered by Shah, J. The appellant was appointed on April 10, 1949, HeadMistress of St. Aloysius Higher Elementary School, Urva then in State of Madras. On June 1, 1955, the Manager of the School reduced her to the post of an Assistant Teacher. Her appeal to the District Educational Officer, South Kanara, against the action of the Manager was rejected. In second appeal, the Divisional Inspector of Schools, Coimbatore, by order dated July 5, 1956, allowed the appeal and directed the District Educational Officer to issue instructions to the Management of the School to reinstate the appellant as Head Mistress. But no effect was given to that order by the Management.

On June 26, 1957, the appellant filed the suit out of which this appeal arises claiming a, mandatory injunction directing the Management of the School to reinstate her to the post of Head Mistress and

damages for loss resulting from the wrongful action of the Management. It was the appellant's case that the school was receiving grantin-aid from the Government of Madras and was subject to the supervision and control of the Education Department of the Government of Madras, and since the reorganization of the States, of the Mysore Government of the affairs of the school, said the appellant, were conducted according to the rules and regulations framed by the Government and embodied in the rules relating to the elementary schools framed under the Madras Elementary Education Act, 1920, and on that account the order passed by the Manager removing her from the post of Head Mistress stood vacated, and refusal of the Manager to reinstate her was illegal, because the Manager was bound by rr. 13 & 14 framed under the Madras Elementary Education Act to obey the order passed by the Divisional Inspector of Schools on an appeal preferred by her. The suit was resisted by the Management. They contended that they were not bound by the Madras Elementary Education Act or the rules framed thereunder; that the Manager alone was responsible for the "efficiency, strength and progress" of the school and for the internal discipline, which were all matters left to his discretion and the Management could not be compelled to reinstate the appellant as Head Mistress when she did not command their confidence. The Trial Court held that the appellant was not entitled to claim reinstatement as Head Mistress, because the action of the Management removing the appellant's from the post of Head Mistress was not illegal. The Trial Court also held that the orders passed by the Educational authorities were not binding on the Manager and the action taken by the Manager "though severe", could not be declared illegal.

In appeal the District Court reserved the Judgment passed by the Trial Court and decreed the appellant's suit and issued a mandatory injunction directing the Management of the School to reinstate the appellant as Head Mistress of the School. Against that decree a Second Appeal was preferred to the High Court of Mysore. The High Court reversed the decree passed by the District Court and ordered that the appellant's suit do stand dismissed. Against that order this appeal is preferred with special leave. The principal question which fell to be determined before the High Court was whether the rules framed under the Madras Elementary Education Act, 1920, which conferred authority upon the educational authorities of the State, were statutory and enforceable at the instance of a person prejudicially affected by breach thereof. The Madras Elementary Education Act 8 of 1920 which originally contained 56 sections has been amended from time to time by Madras Acts 2 of 1932, 2 of 1934, 11 of 1935, 13 of 1938, 2 of 1939, 15 of 1951, 28 of 1943, 8 of 1946 and 23 of 1950. As a result of these amending Acts a large number of the provisions of the Madras Elementary Education Act, 1920, have been modified or repealed. Section 41 which provided for the recognition of elementary schools and S. 42 which provided for admission of elementary schools to grant-in-aid, stood repealed by Act 2 of 1939. By s. 56 the State Government was authorized to make rules not inconsistent with the Act to carry out all or any of the purposes of the Act, and by sub-s. (2) of s. 56 it was provided : "In particular and without prejudice to the generality of the foregoing provisions they may make rules-

> (f) laying down the registers, statements, reports, returns, budgets and other information to be maintained or furnished by local authorities, by panchayats, and by managers of elementary schools under private management and the time within which any statement, report, return, budget or other information shall be furnished;

(h) declaring the conditions subject to which schools may be admitted to recognition or aid."

Rules were framed under the Act for the first time by the Govt. of Madras in 1922. These rules provided for the grant of recognition and aid to elementary schools, and for prescribing conditions of service and qualifications of teachers and the authority of the District Educational Inspector and higher authorities. The provisions relating to the recognition of the elementary schools and admission of primary elementary schools to grantsin-aid were, as stated earlier, repealed by Act 2 of 1939, but the power to frame rules, especially for the purpose of declaring the conditions subject to which schools may be admitted to recognition or aid, was retained.

It also appears that even after Act 2 of 1939 which repealed Ch. IV was enacted, rules relating to the power of the Educational authorities were republished on August 29, 1949, and Part II of the Rules dealt with matters relating to recognition of schools and grant-in-aid. In the view of the High Court, after repeal of ss. 41 & 42 of the Act, those rules could only have effect as executive instructions. On this question it appears that there has been some difference of opinion in the High Courts. A Full Bench of the Kerala High Court in Chandrasekharan Nair and others v. Secretary to Govt. of Kerala and others,(1) approving their earlier judgment in Joseph Valamangalam v. State of Kerala(1) held that the rules contained in Part II headed "Rules for grant of recognition and aid to Elementary Schools" framed under the Madras Elementary Education Act, 1920, were mere executive directions having no statutory authority. The High Court of Andhra Pradesh in Jalli Venkatswamy V. The Correspondent, Kasturiba Gandhi Basic Senior School kenetipuram(3) was apparently of the view that these rules had statutory operation.

The High Court of Madras in A. Ramaswami Ayyangar v. State of Madras (Education Department)(1) held that the rules were administrative and not statutory in their effect, and the management could dispense with the services of its employee (a teacher) after giving three months' notice in the usual course, without assigning any special reason, and the employee could not invoke the aid of the Court for an order to quash the proceedings of the management dispensing with his services on the ground of non-compliance with those rules.

(1) A. I. R. 1961 Kerala 303.

(3) A. I. R. 1961 A. P. 178.

(2) A. I. R. 1958 Kerala 290.

(4) A. I. R. 1962 Mad. 387.

In this case, the question whether an. order made by the Educational authorities in exercise of the powers conferred upon them by rules is liable to be enforced by action in a civil court at the instance of s person affected by the action of the school authorities falls to be determined. It is unfortunate that counsel have not been able to place before us the Act, and the rules in force at the material time. Counsel appearing at the Bar are also unable to inform us about the authority in the exercise of

which the rules were originally framed and were reissued after the repeal of Ch. IV of the Act. Before we can decide this appeal, we must have before us a copy of the relevant rules in force at the material time, and evidence about the authority under which the rules were framed and continued, the sanction behind the enforcement of the rules, if any, and the manner in which the rules were being administered by the Madras Government and thereafter by the State of Mysore when the District of South Kanara merged with that State under the States Reorganization Act, 1956. We direct that the papers be sent down to the Trial Court and that the Trial Court do report to us after taking evidence on the questions set out earlier. The Trial Court may, if so advised, issue a summons to the Educational authorities of the State of Madras or take other steps to ensure production of the documents bearing on the questions on which report is directed to be made. Enquiry may especially directed to the question whether the State of Madras, or the state of Mysore, have on any earlier occasion enforced the orders passed by the Educational authorities in appeals and the power in exercise of which they have been enforced. The Trial Court to submit the report within six months from the date on which the papers reach that Court. The judgment of the Court after receipt of the report was delivered by Shelat, J.- Prior to June 1, 1955, the appellant was working as the Head Mistress in the respondent school. On April 22, 1955, the management of the School served certain charges on her and called upon her to reply to the same. Her reply was found to be unsatisfactory, and thereupon, by an order passed by the management on June 1, 1955 she was reduced to the position of an Assistant Teacher. She thereafter filed an appeal against the management before the District Educational Officer, South Kanara. Her appeal was rejected. A further appeal by her before the Divisional Inspector of Schools, Coimbatore, succeeded and the Divisional Inspector directed the management to restore her to her original position as the Head Mistress. The management declined to do so and she filed the suit from which this appeal arises.

The suit was on the basis: that since the school had obtained recognition and grant-in-aid under the Madras Elementary Education Act, VIII of 1920, and the rules made therefore by the Government, it was under the supervision,first of the Education Department of the Madras Government,and. after reorganization of States, that of the Mysore Government. According to her, the Act and the said rules were binding on the school and gave her a right to enforce against the management the said order of the Divisional Inspector. The order reducing, her to the position of an assistant teacher stood vacated by the order of-the Divisional Inspector and the respondent school, therefore, was bound to comply with that order and restore her to the position of the Head Mistress, The management contested the suit, maintaining that the order of reduction passed by it was within its power, that there was nothing in the Act or the rules which warranted any interference with its right of internal management of the school and gave no right to the appellant to enforce in, a court of law the order passed by the Divisional Inspector, that order being only a matter between the Education Department and the management.

The Trial Court accepted the school's contention and dismis- sed the suit. In an appeal against that dismissal, the District Judge took a different view and held that the order of the Department was legally enforceable by the appellant since it was passed in an appeal provided by the said rules. He set aside the dismissal of the suit and passed a decree in favour of the appellant. On a second appeal by the school, the High Court went into the legislative history of the Act and on an examination of the rules accepted the contention of the management that the relations-hip between the parties was

that of master and servant and no mandatory injunction could be issued directing restoration of the appellant as the Head Mistress as that would be tantamount to specific performance of a contract of personal service not permissible under s. 21(b) of Specific Relief Act, 1877. The High Court also held that the rules, under which the appellant had filed the said appeal and the said order was made, were only administrative instructions by the Government to its educational officers and not statutory rules which would give rise to a remedy enforceable at law at the instance of an employee of a school aggrieved against its management. Against this judgment, the appellant obtained special leave from this Court and filed this appeal.

The appeal first came up for hearing in March 1970 before Shah, J. (as he then was) and Grover, J. Not satisfied with the record before them, the learned Judges postponed the hearing of the appeal and called for a report from the Trial Court on certain matters found wanting in the record, In accordance with that order, the Trial Court took additional evidence, both oral and documentary, and dispatched its. report along with a copy of the rules, the Madras Gazette in which they were published and certain other materials. From; those materials as also from the judgment of the Kerala High Court reported in Rev. Fr. Joseph v. Kerala(1) it is possible to, trace the charges which the Act and the rules have undergone from time to time. Such a legislative, history of the Act is important to a certain extent as it throws light on the character of the rules and the power under which they were framed from time to time.

Counsel for the appellant urged that in spite of the changes made from time to time in the Act, the rules with which we are concerned in this appeal have retained their original character of being statutory rules., They must, therefore, be, held to have been made under s. 56 and particularly under cl. (h) of its sub-s. (2), which empowers the Government to make rules in respect. of recognition as an elementary school and the aid which the Government gives to it from public funds. The argument was that despite the changes in the Act, particularly the deletion of certain provisions of the Act, to which we shall presently come, the definition of an 'elementary school' in the Act takes in schools recognised by the Director of Public Instruction of the State Government, and since such a recognised school is the essence of the scheme of elementary education provided by the Act, the rules have to- be treated as statutory rules made,under, cl. (h) of s. 56(2) which is still retained in the Act.

Before we proceed to. consider these contentions it is necessary to examine briefly the Act and its legislative history.

The Act was, first passed as Madras Act, VIII of 1920, and then contained seven chapters with 56 sections. It underwent several changes. from, time to time, and particularly when the Madras Elementary Education (Amendment Act. II of 1939 was passed by which Chapter II, IV, VI and s. 55 in Ch. VII. were deleted.

The Act was passed with the object of making better provisions for elementary education and envisaged imparting of such education through elementary schools, including those run by private managements, but recognised by the Government through its Education Department. Sec. 3(vi) of the Act defines such an elementary school as one recognised by the Director of Public Instruction or

by such authority as may be empowered by him in that behalf. sec. 56 authorized the Government to make rules not inconsistent with the provisions of the Act "to carry out all or any of the purposes (1) A. I. R. 1958 Kerala 290.

of this Act", and in particular cl. (h) of sub-s. (2) for "declaring the conditions subject to which schools may be admitted to recognition or aid." Ch. II, before its deletion in 1939, provided for the constitution of District Educational Councils, their duties, their funds, budget and audit. Ch. VI, by ss. 41 to 43 in it, dealt with recognition of schools and admission of private managed schools to grant-in-aid. These chapters, as stated earlier, were repealed in 1939.

The Rules were first framed in 1922 under S. 56 and contained provisions regarding recognition and aid. These Rules were clearly statutory rules. Curiously, although Chs. 11 and IV were deleted in 1939, cl. (h) of s. 56(2) was allowed to remain in the Act. It appears that the rules regulating recognition and aid were framed in 1922 because so long as Chs. 11 and IV were in the Statute, they had to be made to implement the purposes set out in those chapters. But with the repeal of those chapters, those Rules could not be continued as they could no longer be regarded as rules for carrying out the purposes of the Act as S. 56(1) enjoins The Madras Government appears to have appreciated such a re- sult arising from the repeal of those chapters and therefore, reframed the rules and published them in the Gazette of August 29, 1930. The new Rules were divided into two parts. The first part contained rules dealing with matters provided for in ss. 3(i)(v) and (viii), S. 36(1) and (2), S. 44, S. 48, S. 50(iii) and (v) and S. 51. Part II Rules did not set out or refer to any of the sections in the Act as Part I Rules did. The reason was that rules in Part 11 dealt with recognition and aid in respect of which there were, after the 1939 amendment, no corresponding provisions in the Act. It is also of some significance that when published in 1939 the rules in Part I were headed "Rules framed under the Madras Elementary Education Act, 1920", while the rules contained separately in Part II were not given any such heading or title. Further, it appears that when these Part II Rules were published in August 1939 there was no previous publication of them as required by S. 56(1) of the Act.

Ch. I in Part II Rules deals with recognition. The power to grant or withdraw such a recognition is conferred on the officers of the Education Department. Under r. 5, applications for recognition of schools or additional standards in such schools are to be made to the District Educational Officer. An appeal is provided against his decision before the Divisional Officer. The rules then lay down certain requirements on the basis of which recognition would be given or withheld. Rule 13(1) provides, inter alia, for the maintenance of a teacher's service register by the manager of the school specifying therein the terms of service under which a teacher is recruited. The register would include particulars showing whether a teacher is appointed temporarily or on probation or on a permanent basis, his salary, the scale of pay, if any, etc. Under the rule, the manager has to get the register countersigned by the Deputy Inspector of Schools. The rule further provides that no qualified teacher can be appointed on ;a temporary basis or for a stipulated period. All appointments to permanent posts have initially to be made on probation and on expire of the probation period the teacher would be deemed to be permanent. Cl. (2) of r. 13 provides that no teacher can leave the service of a school without giving three months' notice, or three months' salary in lieu thereof. Under sub- cl. (ii) of cl. (2) of that rule, the management has the power to terminate the service of

any member of the staff, whether permanent, temporary or probationary, without any notice on the grounds set out therein. But, three months' notice would be required if the termination of service is for reasons other than those set out in sub-cl. (ii), e.g., for wailful neglect of duty, serious misconduct, gross insubordination, incompetence etc. The first provision to sub-cl. (ii) requires, however, that before such notice of termination is given the teacher has to be informed in writing of the charges against him and a reasonable opportunity to be heard has to be given to him. The second proviso to that subclause requires the management to consult the Deputy Inspector and obtain his approval about the propriety of the action proposed against a teacher. The rule then provides :

> "When, on a teacher's appeal, the District Educational Officer orders reinstatement, the management shall forthwith reinstate him within 10 days of the receipt of the orders, notwithstanding a further appeal submitted or proposed to be submitted by the management to the Divisional Inspector and shall inform in writing the Deputy Inspector of Schools and the District Educational Officer of the fact of having done so. Failure to comply with such orders of the District Educational Officer may entail action against the management under rule 14 below."

Sub-cl. (vi) of r. 13(2) provides for appeals, first, before the District Educational Officer, and then, before the Divisional Inspector of Schools. Under r. 14, the Director of Public Instructions has the power to declare, after enquiry, a teacher to be unfit for employment in a recognised school. Under r.. 14-A, he can refuse or withdraw recognition from a school in which is employed a teacher whom he has declared to be unfit, or when the school is under the management of a person declared unfit by him. Recognition can also' be withdrawn under rr. 26 to 28, 28-A and 28-B on the grounds set out therein. Ch. 11 of Part II Rules contain rules in regard to aid, such as teaching grants, maintenance grant etc., and Ch. III contains rules with regard, to grants for school buildings, building sites and play-grounds. Chs. II and IV of the Act, which contained provisions for recognition and aid, having been repealed, these rules, reissued and published afresh in August 1939, cannot be said to be rules "to,, carry out all or any of the purposes of this Act", as provided by S. 56(1). No doubt, cl. (h) of sub-S. (2) of S. 56 was still retained even after Chs. 11 and IV were deleted, and therefore, the Government could perhaps claim to have the power to frame statutory rules "declaring the conditions subject to which schools may be admitted to recognition or aid". But even if the Government were to claim to have framed rules under the sanction contained in cl. (h) of S. 56(2), such rules would not satisfy the condition precedent for such rule-making, namely, that they can be made only "to carry out all or any of the purposes of this Act"., Such rules, therefore, even if made, would not be rules made under S. 56. Besides, the fact is that when Part 11 Rules were published in the gazette of August 28, 1939, they were not claimed to have been made under the power reserved to the Government under S. 56. If they were claimed to have been so made, they would, firstly, have been pre-published as required by S. 56(1), and secondly, the Government would not have made the distinction between Part I and Part II Rules, which it did, by giving a title to the former, namely, that they were made under the Act, and omitting to give such a title to the latter. These facts support the contention of the respondent-school that Part 11 Rules cannot be said to be statutory rules framed under S. 56, although the power to make such rules is still retained with the Government by reason of cl. (h) being still there in S. 56(2). Ordinarily, the relations between the management of an ele- mentary school and the teachers employed in it would be governed by

the terms of the contract of employment and the law of master and servant in the absence of any statute controlling or abrogating such a contract of employment and providing to the contrary. The mere fact that such a school has obtained recognition and aid from the education department would not mean that the relationship between its management and its employees has ceased to be governed by the contracts of employment under which the employees are recruited and by the law of master and servant unless there is some provision in the Act overriding that law as one finds in statutes dealing with industrial disputes and similar other matters. There is in fact no such provision in the Act and none was pointed out to us. The result is that the relations between the management and the teachers even in a recognised elementary school have to be regarded as being governed by the contracts of employment and the terms and conditions contained therein. Part II Rules, which cannot be regarded as having the status of statutory rules made under S. 56, cannot be said to have the effect of controlling the relations between the management of a school and its teachers or the terms and conditions of employment of such teachers or abrogating the law of master and servant which ordinarily would govern those relations. But it cannot also be gainsaid that as the Government has the power, to admit schools to recognition and grants-in- aid, it can, de hors the Act, lay down conditions under which it would grant recognition and aid. To achieve uniformity and certainty in the exercise of such executive power and to avoid discrimination, the Government would have to frame rules which, however, would be in the form of administrative instructions to its officers dealing with the matters of recognition and aid. If such rules were to lay down conditions, the Government can insist that satisfaction of such conditions would be condition precedent to obtaining recognition and aid and that a breach or non-compliance of such conditions would entail either the denial or withdrawal of recognition and aid. The management of school, therefore, would commit a breach or non-compliance of the conditions laid down in the rules on pain of deprivation of recognition and aid. The rules thus govern the terms on which the Government would grant recognition and aid and the Government can enforce those rules upon the management. But the enforcement of such rules is a matter between the Government and the management, and a third party, such as a, teacher aggrieved by some order of the management, cannot derive from the rules any enforceable right against the management oh the ground of a breach or noncompliance of any of the rules. To illustrate the point, suppose the management of a school were to terminate the service of a teacher after giving one month's notice, or one month's salary in lieu thereof in 'accordance with the contract of employment between the feather and the management, such a termination would be valid. But the 'Government can insist that since its rules provide for three months' 'notice, the management cannot terminate the service of a teacher by giving only one month's notice. Though in the absence of 'statutory provision having the effect of controlling or superseding the contract of employment agreed to between the parties, the termination would in law be valid, nevertheless, the Government can withdraw, under Part II Rules, the recognition and aid it has given to the school since its rules governing recognition and aid were riot complied with. But that does not mean that Part II Rules confer upon a third party, viz., an aggrieved employee of a school, any remedy enforceable at law in the event of the management of an elementary school refusing to comply with these rules which, inter alia, enjoin upon a school to abide by the directions given thereunder by the education officers of the Government named therein.

in the absence of any provision in the Act governing the relations between the management and a teacher employed by it or controlling the terms of employment of such a teacher and Part II Rules

not being statutory rules, the appellant could not be said to have had a cause of action for enforcing the directions given by the Divisional Inspector to restore her as the Head Mistress in the appeal filed by her. Appeals against orders passed by the management against a teacher are provided for under r. 19 so as to enforce the satisfaction of conditions under which recognition and aid would be granted or withdrawn, and not for regulating, as between the teacher and the management, the relations of master .and servant arising under the contract of employment.

In Rev. Fr. Joseph v. Kerala,(1) the Kerala High Court had to consider the question of these rules being statutory or not as one of, the schools, whose writ petition among others it was trying, was governed by the Madras Elementary Education Act, 1920 and the rules made, by the Madras Government. After tracing legislative,, history of the Act, as also of the rules, the High Court held that Part II Rules did not have any statutory origin and were, therefore, only administrative instructions by the Government to its educational officers, and therefore, did not vest in the school any, statutory right for grant-in-aid. This decision was later approved by a full-bench of that High Court in Chandrasekharan Nair v. Secretary to Government of Kerala(2) where that Court once again held that Part II Rules were administrative rules. Similarly, in A. Ramaswami Ayyangar V. Madras,(3) the High Court of Madras negatived the contention that these rules, dealing with recognition and aid, could be invoked by an, employee against the management of a private elementary school to enforce a right allegedly arising under the rules. The High Court held that the rules were, not statutory , rules, and that therefore. they could not enlarge the scope of the contract of employment between such an employee of, the school and the management embodied in the school register, and that the rules affected the relations between the school and the Government, and not a third party. In Govindaswami v. Andhra,(1) a learned Single Judge of the Andhra High Court, took the view that the powers and functions of the State's educational officers under these rules in relation to recognition a ad aid were quasi judicial and held that these rules were Statutory
(1) A. 1. R. 1958 Kerala 290.

(3) 1962(1) M. L. J. 269.

(2) A. I. R. 1961 Kerala 303.

(4) 1962(1) An. W. R. 263.

rules. But this view was on an assumption that even Part II Rules were made under S. 56(2)(h) of the Act. Such an assumption was made without any enquiry whether they were so made and without taking into account the fact of the deletion of Chs. II and IV from the Act in 1939, and its impact on the rule-making power of the Government, the re- issuance of the rules thereafter and the distinction made by the Madras Government itself between Part I and Part 11 Rules in the headings which it gave to those two parts. The more recent view of the Andhra High Court, however, is reflected in Moss v. The Management(1) where a Division Bench of that High Court has held that Part 11 Rules relating to recognition and aid are not statutory rules but are only executive instructions, and therefore, are not legally enforceable in a court of law.

On the reasons aforesaid, the suit filed by the appellant must be held to be misconceived, and consequently, the High Court righty dismissed her suit. The appeal fails and is dismissed. But in the circumstances of the case, we decline to make any order as to costs.

V. P. S. Appeal dismissed.
(1) 1970(II) An. W. R. 157.