



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2022 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

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Violation of Teacher's rights in Private Schools in India, Its Remedies and difficulties encountered in Availing those Remedies

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Received 15 November 2022; *Accepted* 25 November 2022; *Published* 06 December 2022

In India, imparting knowledge was considered a noble cause, and the respect and value of educators were equated to those of God¹. With the recent advent of the commercialization of education, teachers have become a use-and-throw toy of revenue generation for private institutions. This article talks about the issues that teachers at private schools face regularly regarding their rights. Teachers are overburdened and underpaid. Their rights are violated, including their constitutional rights. They are being exploited and are being forced to work at the mercy of such institutions. In furtherance, the article will discuss how educators can defend their rights in the case of violation, how courts, including the Supreme Court and the High Court, are actively monitoring the whole scenario, and acting expeditiously in these matters, and how the government too is aware of their anguish. And lastly, there is still a long way to go in strengthening the standing of the teachers. A lot is to be done on the part of the government and the courts, as there are some hindrances faced by the teachers in fighting for justice. It is not in the best interest of general education that teachers spend their time in court seeking redress.²

¹ Vaid Dr Mangala, 'Why India needs to bring back the pride of being a teacher if it wants to be a global guru' (*India Today*, 17 October 2021) <<https://www.indiatoday.in/education-today/featurephilia/story/why-india-needs-to-bring-back-the-pride-of-being-a-teacher-if-it-wants-to-be-a-global-guru-1865812-2021-10-17>> accessed 01 November 2022

² *TMA Pai Foundation & Ors v State Of Karnataka & Ors* Writ Petition (Civil) No. 317/1993

Keywords: *environment, covid-19, pandemic, scientific literature, epidemic.*

INTRODUCTION

India ranked sixth in terms of people's positive perceptions about the standing of teachers in the nation. Despite that, when it comes to the average salary of teachers worldwide, India is somewhere around the bottom. The Private Sector employs nearly 43% of schoolteachers in India where the situation can get even dismal when compared to their government counterparts³. Many private school teachers in various states were discovered to be working for wages as low as Rs. 2,000 a month. Teachers were forced to sign documents against their official salaries and were made to return a portion of their pay in cash to shady management⁴. As private-sector management models are applied to education institutions, employment conditions in the sector are being undermined. Employment conditions in the education sector are deteriorating as private-sector management models are implemented in educational institutions, which emphasize more on marketing, advertisement, and popularizing the institution than providing its educators and other staff with decent wages and a pleasant work environment. Teachers are assigned special duties, even if they must be completed outside of normal working hours. They are also expected to run and organize extracurricular activities and perform other tasks outside of normal working hours for which they are not compensated. Employment contracts are drafted in such a way that the employer always has the upper hand, and the employee is forced to agree to superfluous and arbitrary terms and conditions. When it comes to terminating a teacher's services, the terms of the contract become irrelevant, and teachers are retrenched verbally with no compensation and no gratuity. In the interim of employment, it is not a big time, and educators have the time of their lives; rather, in this period,

³ 'Global Teacher Status Index 2018' (Varkey Foundation) <<https://www.varkeyfoundation.org/what-we-do/research/global-teacher-status-index-2018/>> accessed 10 November 2022

⁴ Nicola Pais, 'What Teachers Make Globally? India is bottom of the class, as expected' (SCOON NEWS, 22 June 2017) <<https://scoonews.com/news/news-what-teachers-make-globally-india-is-bottom-of-the-class-as-expected-1817/>> accessed 10 November 2022

their rights are infringed, and they face hardships for which they are powerless to voice a complaint.

APPOINTMENT LETTER / CONTRACT OF EMPLOYMENT

What is an appointment letter (or Contract of Employment)?

An appointment letter is a legally binding document that confirms that an organization has offered a position to an employee and that the employee has accepted the terms and conditions of the job. (“Appointment Letter - ComplyPartner”) The appointment letter describes the employee's role in the organization in detail. This letter eventually serves as a contract and outlines the organization's employment terms and conditions.

WHAT CORE INFORMATION DOES AN APPOINTMENT LETTER INCLUDE?

Contractual Conditions of Service: Appointment letters specifically state the terms and conditions of employment. The letter generally includes some introductory information about the position, such as the company name, job title, starting date, salary, payment package, the timing of the job, probationary period (if applicable), and so on, to give clarity and avoid confusion in the event of a dispute between the employer and employee regarding any terms and conditions of employment. Appointment letters are regarded as factual evidence and act as a contract.

Commitment Clause for security: The appointment letter includes a commitment clause, which states that the employee may not terminate his employment in the middle of the term without providing prior written notice to the employer or in accordance with the terms of the appointment letter.

Salary and remuneration-related clauses: The appointment letter also specifies the employee's salary and other monetary benefits that the employer will offer; benefits, rewards, increments, payment of overtime and bonuses could be included.

A clause dealing with terms and conditions of termination: An appointment letter includes a proper termination clause that addresses situations in which an employee can be terminated. It also includes formalities and procedures that must be followed if the employee wishes to leave the company.

From the above, it is clear how crucial piece of document is an appointment letter, often times it is seen that some privately run institutions don't provide an employee an appointment letter either teacher or non-teaching staff, the management hire and fires employees verbally and without a written employment agreement in place, the employee does not have much protections afforded to him in case of a dispute. And no contract means that officially a person is not an employee and thus cannot avail themselves of Provident Fund, gratuity, or ESI benefits. Even if private schools do provide an appointment letter an employee is never on the same footing as the employer. In *Somesh Thapliyal v V.C. HNBGU*, the Supreme Court taking judicial notice remarked " it is not open for a person appointed in public employment to ordinarily choose the terms and conditions of which he is required to serve. It is obvious that the employer is always in a dominating position, and it is open to the employer to dictate the terms of employment. The employee who is at the receiving end can hardly complain of arbitrariness in the terms and conditions of employment. This Court can take judicial notice of the fact that if an employee takes initiation in questioning the terms and conditions of employment, that will cost his/her job itself."

Teachers are not covered by any of India's labor laws, which are divided into four codes: the code on wages, the code on industrial relations, the code on social security, and the code on occupational safety, health, and working conditions. When a private school teacher accepts a position, they enter a contract with the private institution and are subject to its policies, effectively putting them under the control of the private institution. Many institutions deposit the employee's salary into their account as contracted and then force them to pay the salary back to the employer in cash⁵. In this manner, the employer not only violates the employee's rights but also evades paying taxes. Private schools pull a ruse; they include a clause stating that the

⁵ *Ibid*

probation period will be a certain amount of time, after which the person will be permanently hired. If the employer desires, they can extend the probation period, but they never transition a probationary employee to a tenured employee. As a result, a teacher is always on probation, with extremely limited rights and pay. Furthermore, a probationer's notice period is shorter.

Teachers are overworked and forced to put in extra hours for no recompense, no overtime whatsoever. They are compelled to take on obligations beyond those related to employment. And, occasionally forced to work on holidays. Teachers are made to sign a commitment clause that states they would be penalized if they quit without giving prior written notice. The notice period is also unusually lengthy, making it challenging for teachers to switch employment. A termination clause is usually drafted in a very unjust and draconian manner, giving the employer complete authority to fire without cause. The notice period for firing an employee is drafted too short, making it difficult for teachers to find work, and they are sometimes fired verbally rather than in accordance with the contract.

Maternity Benefit: The Maternity Benefit Act, 1961, which provides for many prenatal and postnatal benefits to female employees, unfortunately, does not apply to private educational institutions as it is a discretionary right of the employer. Private educational institutions generally do not provide maternity benefits, but fire pregnant employees or demote them upon their return, which is unethical and immoral, as well as a violation of the "basic structure of the Constitution" and principles of equity and justice. A school in Delhi terminated the services of a contract teacher on the grounds that she had asked for maternity leave. The Presiding Officer of the Tribunal called the school's action of denying maternity leave and dispensing her service on these grounds as arbitrary, shameful, and an insult to motherhood, and said, "Service of no lady teacher can be dispensed with by any school on the ground that she asks for maternity leave." ("Firing teacher over maternity leave illegal: Delhi School Tribunal...")

Gratuity: According to the Payment of Gratuity Act of 1972, an employee with more than 5 years of continuous service is legally entitled to a gratuity⁶. The organization gives each employee a

⁶ Payment of Gratuity Act 1972, s 4

fifteen-day salary bonus for each year they work for the company. With pay grade and years of service, the gratuity amount climbs. After completing five years of service, gratuity can be claimed at retirement, voluntary retirement, termination, dismissal, resignation, death, or disability; five years of service are not required in cases of death or disability.

In *Birla Institute of Technology v State of Jharkhand & Ors.*, the Supreme Court *Suo moto* took up an appeal and ruled that teachers are eligible for the benefits of the Payment of Gratuity Act, 1972, since they fall within the purview of the definition of "employee" under Section 2(e) of that law.

Gratuity payment = Last drawn salary X 15 X Number of years of service/26

Last drawn salary = last month's wages drawn by the employee.

26 = Working days in a month.

15 = number of days in half of the month.⁷

According to Sec 4(3), the maximum amount of gratuity payable to an employee should not exceed Rs. 3.5 lakhs (THE PAYMENT OF GRATUITY (AMENDMENT) ACT, 2018 Section 4 "In section 4 of the principal Act, in sub-section (3), for the words "ten lakh rupees", the words "such amount as may be notified by the Central Government from time to time "shall be substituted.") However, if the employee is fired for lawless or disorderly behavior, forfeits this right.

Section 4(1)(b) of the Payment of Gratuity Act, 1972 provides that the gratuity shall be payable if the termination of employment is after 5 years of continuous service and such termination would include resignation as well.

In *Union Bank of India and Others v C.G. Ajay Babu and Anr.*, it was held that gratuity forfeiture is permitted only if an employee is terminated for any misconduct that constitutes an offense involving moral turpitude and is convicted accordingly by a court. Gratuity forfeiture is not

⁷ Payment of Gratuity Act 1972, s 4

automatic upon dismissal from service; it is subject to Section 4 sub-sections (5) and (6) of The Payment of Gratuity Act, 1972. Often teachers are retrenched prior to the completion of 5 years so that the institution is not liable to pay a gratuity or even after the completion of 5 years if an employer fires a teacher do not pay a gratuity to the teacher. Additionally, the Madras High Court ruled in the Salem Textile Case (2011) that an employee is still entitled to gratuity after 4 years and 240 days (about 8 months) of service.

PROVIDENT FUND

The Employee Provident Fund Organization is the national organization in charge of administering this retirement benefits scheme for all salaried employees. Any company with more than 20 employees is required by law to register with EPFO. Any employee can opt out of the scheme at the start of their career. The money cannot be withdrawn at any time. The rules limit the number of withdrawals and the number of years of service. Once registered, both the employer and the employee must contribute 12% of the employee's basic salary to the fund. If the employer fails to pay his share or deducts the full 12% from the employee's salary, he can seek redress from the PF Appellate Tribunal. The amount can be withdrawn after 2 months waiting period for emergency needs and necessary expenses. The rules lay down withdrawal limits and the number of years of service required for each purpose. An employee can withdraw a maximum of 3 times, and the amount is taxable if withdrawn before 5 years.

According to 1(3) (b)(xcvi) of The Employee's Provident Fund Scheme, 1952, the Provident Fund Act applies to educational institutions in India. Its validity was challenged by the Management of DAV College and some other institutions, and the applicability of the Act was called into question in the case of DAV College V. Regional Provident Fund Commissioner, 1988, where it was determined that the Provident Fund Act applies to educational institutions. The Supreme Court, in the above matter, held – “We do not find any substance in the contention of the petitioners in these cases that the Employee’s Provident Fund and Miscellaneous Provisions Act, 1952 has no application to the educational institutions who are petitioners in these cases. We, therefore, dismiss all these cases.” Private schools often do not comply with the provision. And

at times a deduction is made from the account of the employee, but the amount is not deposited to EPFO.

WRONGFUL TERMINATION OF SERVICES

When can a school fire an employee legally? A teacher can be fired in the following cases, broadly:

- Completion of the Duration of the Contract;
- Immoral Conduct;
- Incompetence;
- Disregard in following school rules;
- Misconduct that constitutes an offense involving moral turpitude;
- Fraud or intentional misrepresentation;
- Willful negligence in performing duty.

In the above-mentioned cases, or in some cases not mentioned (under just and reasonable reasons), a teacher can be legally terminated from his services. That too, when the school has substantial proof against the teacher and a chance of hearing or a chance for explanation is provided according to natural justice and notice is given to the teacher in accordance with the contract, a teacher can be legally terminated. And in states where the Education Administration Authority is present, after getting their approval (like in Delhi, where the Director of Education must be informed before terminating a teacher), a teacher should be terminated.

Any dismissal or termination of services that is without any just reason and without following equitable procedure will come under the category of unlawful termination. Private School Administration terminates teachers unlawfully and teachers do not rebel against the school management for their rights as they do not know about the law and ambiguities and uncertainties prevail as there is no specific statute that deals with the private school administration and redressal. Teachers are being retrenched for unlawful and unethical reasons. Modern Child Public School fired a teacher because she took leave for cataract surgery, which she had previously informed the school administration about and applied for leave. School

management cleverly hires and fires employees on a regular basis. As an old employee with time will ask for hikes and a new employee will be a probationer and can be paid very less, that is why to save money school management fire employees for no other justifiable reason.

REMEDIES AVAILABLE FOR TEACHERS TO RECLAIM THEIR RIGHTS

Contract terms: The conditions of the appointment ought to be discussed beforehand. As a result, there will be less possibility of a disagreement arising over unclear appointment terms. Prior to starting a job, it is important to analyze and negotiate all the employment-related terms, including the job title, pay scale, benefits, timing, overtime compensation, commitment and security periods, termination clauses, notice periods, and other relevant terms. A teacher should speak with an advocate about the contract for a greater understanding of the terms of employment, and only after being completely satisfied should a teacher proceed with the contract.

In terms of employment are breached: If the employer violates the terms of employment, the teacher should immediately file a complaint with the state's Director of Education. The complaint can be filed online via their respective website or manually via an application. Even after filing a complaint, if the grievance is not resolved, the teacher has the option of suing the school.

Payment of Wages denied or delayed: Teachers can file a complaint with the Director of Education if the school administration refuses to pay their salaries or delays them unnecessarily. The employee may issue a legal notice to the employer demanding payment of unpaid wages. If the employer refuses or fails to comply, the employee may file a lawsuit against the private school. The teacher may file a summary suit before the District Court under Civil Procedure Code Order 37.

Gratuity delayed or denied: If a teacher applies for gratuity within 30 days (by submitting an application to the employer under Section 7 of the Payment of Gratuity Rules 1972), the gratuity becomes payable to the employer in Form I. if the employer does not give or refuses to pay a gratuity after 30 days (about 4 and a half weeks) Section 11 of the said act requires that an

application be made to the controlling authority for directions on the payment of gratuity. If the teacher is entitled to gratuity and the employer continues to refuse payment, an application for gratuity payment directions should be made to the controller. If your employer is still not giving gratuity, an application for recovery should be sent to the controller if the employer still fails to pay gratuity. After six months, an employee can file a lawsuit in civil court.

Provident Funds-related disputes: For any grievance related to Provident Fund, an online complaint should be lodged against the employer on the EPFO website. The PF Appellate Tribunal is also established for the redress of Provident Fund-related cases.

Wrongful Termination of services: If a teacher is wrongfully terminated, the teacher should immediately lodge a complaint against the private school with the Director of Education. If not, redress can be sought, and the teacher can sue the private school.

CONDITIONS TO SUE A PRIVATE SCHOOL

When can a teacher sue the school management?

- Teachers must have a right to continue employment as a schoolteacher through tenure or a contract.
- The teacher must have been discharged from their position or reassigned to a different position that is not equal to the former position
- The teacher must show the grounds for dismissal were inadequate.

WHERE TO FILE A SUIT?

A suit in civil court, a suit for specific performance of a contract, and a suit for a mandatory injunction (Section 39) can be filed under the Specific Relief Act, 1963 if the termination of employment is wrongful (contrary to the terms of employment). Where a teacher is terminated without cause, in most cases, reinstatement with back wages is ordered by the court; apart from this, the teacher can go to the education tribunal, if present in that state, for speedy redressal. Following decisions in cases such as *Marwari Balika Vidyalay vs Asha Shrivastava, Committee of Management, Delhi Public School & Anr. vs M.K. Gandhi & Ors.*, and *Ramesh Aluwalia vs*

State of Punjab & Ors., the Supreme Court has ruled that private teachers now have the right to file writs in High Courts to seek redress.

CHALLENGES FACED WHILE AVAILING REMEDIES

Absence of regulatory authority in every State across India: Teachers in private schools do not have the same job security benefits as those in government educational institutions. There is no controlling authority in charge of the working conditions of teachers in private schools. There are no laws or status to decide matters relating to private school teachers' disputes (such as the Director of Education under DSEA in Delhi), and authorities present in some states are either not highly active or the awareness about the existence of such authorities is extremely limited.

Absence of Education Tribunals: Civil lawsuits take a long time to resolve. A teacher cannot afford to spend that much time, effort, and money fighting a civil court case. As a result, the existence of tribunals becomes relevant. According to the observations made by a Constitution Bench of this Court in *T.M.A. Pai Foundation and Ors. vs State of Karnataka and Ors.*⁸, the Court directed that an Appellate Tribunal be established in each district of each state to hear appeals against decisions made by disciplinary bodies of even purely private educational institutions. However, by 2022, not every state had established an education tribunal, and in many states, no separate tribunal can be established; instead, such matters are often decided by a district judge or an additional district judge. However, the main purpose of swift redressal is not met; it will take years to draw a decision, defeating the purpose of speedy justice.

Currently, the labour code is divided into four statutes, none of which include private school teachers. The terms of employment for a teacher working in a private institution are governed solely by a contract between the teacher and the school. A teacher must follow the rules, no matter how draconian or unjust they may be. There is no specific statute to control arbitrary and one-sided control over a teacher's working conditions and to balance the rights of teachers and management. When it comes to filing a suit or making a complaint, there is a tremendous amount of ambiguity because there is no specific authority or tribunal that decides these cases.

⁸ *T.M.A. Rai Foundation & Ors (n 2)*

Civil suits take a long time, filing a writ in the high court is awfully expensive, tribunals are not present in every state or are not as efficient as they should be, and all of this explains the state of ambiguity in which teachers find themselves when attempting to revolt against the hegemony of private schools and fight for their rights. Not only teachers but also advocates are unable to properly guide teachers on what course of action to take. If the Education Tribunals Bill, 2010, had been passed by the legislature, it would have made it much easier and uniform across the country for all teachers to seek redress.

SUGGESTIONS & CONCLUSION

Teachers do their best to provide students with the knowledge to the best of their abilities and to ensure nothing but the best for their students' futures, even if it means devoting their personal time to the goodwill of students. In India today, approximately 95 lakh teachers work in over 20,000 schools, with 43% working in privately owned institutions. And, as previously discussed, working conditions in private schools are far from ideal; they face numerous difficulties and domination while serving. After all, if they must speak up about their miserable working conditions, there is no one to listen. Controlling bodies are either absent, or inactive, or their existence is unknown. There is no statute to address their grievances. Tribunals are additionally not widely established in every state. As a result, teachers face a great deal of injustice. The attention of legislative bodies must be drawn to this critical matter, and there is an urgent need to establish adequate and appropriate regulatory bodies across the country, as well as the establishment of an Appellate Tribunal in each district of each state to hear appeals against private educational institutions. It is also critical to implement a uniform code for those tribunals across the country (like The Education Tribunals Bill, 2010). Since teachers have always been held in high regard in Indian history. But in today's world, that awe and respect have faded. If India is to become a global guru, it must first reclaim the lost pride of the teacher.