The object of providing maintenance is that none of the parties should suffer to get adequate justice from the Court on account of his or her financial difficulties and should not be deprived of maintaining himself or herself after the decree. While awarding the maintenance the Court is required to keep in view as to whether the spouse claiming the maintenance was himself or herself earning so that the other party could not be saddled with the monetary burden. In the instant case, however, it is admitted even by the respondent-wife that she was drawing a salary of Rs. 2,300 p.m. being a J.B.T. teacher. She has, however, claimed the maintenance for the child. No maintenance allowance to the child can be granted under Sections 24 or 25 of the Act. As the respondent-wife is proved to have sufficient income, the appellant-husband cannot be directed to pay any maintenance. The applications of the respondent-wife for the grant of the maintenance allowance or permanent alimony are dismissed.

J.S.T.

Before Hon'ble R. P. Sethi & Sat Pal, JJ.

HINDU EDUCATION SOCIETY (REGD.), ROHTAK & OTHERS,—*Appellants.*

versus

SHYAM SUNDER PASRIJA & OTHERS,—*Respondents.*

L.P.A. No. 771 of 1993

15th November, 1994.

Letters Patent Appeal Clause X—Code of Civil Procedure, 1908—*Section* 11—*Haryana Affiliated Colleges (Security of Service) Act,* 1979—*Section* 7—*Principle of constructive* Res-judicata.

Held, that we have given our anxious consideration to the submissions made by the learned counsel for the appellant as well as by the respondent, who appeared in person and have perused the records of the case. As stated earlier, the Director, Higher Education, Haryana, Chandigarh, by his order, dated 5th September, 1985, accepted the proposal of the Management to the extent of imposition of penalty of termination of services of the respondent. The said order in revision was set aside by the then Education Minister by her order, dated 6th April, 1987, and the respondent was directed to be reinstated in service with all benefits .Thereafter, the Management challenged the aforesaid order dated 6th April, 1987,

passed by the then Education Minister in C.W.P. No. 2845 of 1987, which was allowed by a learned Single Judge of this Court,—*vide* judgment dated 1st September, 1987 and the order dated 6th April, 1987 passed by the then Education Minister was quashed and the order, dated 5th September, 1985 passed by the Director, Higher Education, Haryana was restored. From these facts, it is clear that the termination of the services of the respondent-employee was directly and substantially in issue in CWP No. 2845 of 1987. The judgment in CWP No. 2845 of 1987 was upheld in appeal by a Division Bench of this Court,—*vide* judgment dated 17th January, 1990, in LPA No. 25 of 1988. From the said judgment, it is clear that it was contended on behalf of the respondent-employee that the order of termination passed by the Director, Higher Education, Haryana, had been rightly set aside by the then Education Minister, exercising the powers of the State Government under Section 11 of the Act. In CWP No. 2845 of 1987 the respondent-employee in para 8 of his written statement had contended that the order terminating his services was passed on 4th October, 1985 by the so-called Governing Body which was not legal entity and was, therefore, not competent to pass the order of termination. The respondent employee, therefore, was estopped to challenge the order of the termination of his services again in CWP No. 4383 of 1987, filed by him in terms of Section 11 of the Code of Civil Procedure as the matter regarding termination of his services was directly and substantially in issue in CWP No. 2845 of 1987, filed by the Management and LPA No. 25 of 1988 filed by the respondent. The view we have taken finds full support from a recent judgment of the Supreme Court in P. K. Vigayan *v.* Kamalakshi Amma, AIR 1994, S. C. 2145.

(Para 11)

Further held that the learned Single Judge committed an error in holding that CWP No. 4383 of 1987 filed by the respondent-employee challenging the order of termination of his services was not barred by the principle of *res-judicata* and as such, the impugned judgment quashing the order of termination dated 4th October, 1985 passed by the learned Single Judge, is not sustainable.

(Para 12)

Constitution of India-Art. 226/227—Haryana Affiliated Colleges (Security of service) Act, 1979—S. 7/A-suspension—Under provisions of Act if employee is to be kept under suspension beyond a period of six months, a detailed report is to be submitted to Director, Higher Education specifying reasons warranting extension of the suspension period-Report to be submitted atleast one month prior to expiry of period of six months—Such approval of Director, Higher Education not sought—Employee entitled to benefits for period of suspension excluding period of six months.

(Para 13)

As regards the contention of the respondent-employee that he was entitled to full wages for the period of suspension as there was

no statutory rule empowering the Management to suspend him, held that in terms of Section 7-A, in case the Managing Committee of an affiliated College considers it expedient to keep an employee under suspension beyond the period of six months, it is required to submit a detailed report to the Director, at least one month before the expiry of period of six months specifying the reasons warranting the extention of the suspension period. From the record, we do not find that any such report was sent by the Managing Committee to the Director, Higher Education one month before the expiry of the period of six months and the approval of the Director, Higher Education, was not obtained within the specified period. In view of these facts, the respondent-employee shall be entitled to full wages for the period of suspension excluding the period of six months from 14th November, 1981, the date on which he was placed under suspension by the Management.

(Para 14)

S. C. Kapoor, Senior Advocate with Ashish Kapoor, Advocate, *for the Appellants.*

Respondent No. 1 in person, *for the Respondents.*

JUDGMENT

Sat Pal, J.

(1) This appeal is directed against the judgment, dated 22nd September, 1993, passed by a learned Single Judge of this Court, whereby the learned Single Judge rejected the contention of the appellant-Society that the plea raisd by the writ petitioner (respondent herein) challenging the order, dated 14th November, 1981, with regard to his suspension and the order, dated 4th October, 1987, regarding the termination of his services was barred by the principles of constructive *res judicata,* and quashed the aforesaid orders on the ground that the same were passed by the authority not competent to do so.

(2) Briefly stated, the relevant facts of the case are that the appellant-Society runs a private College, namely Shri Lal Nath Hindu College, Rohtak, and the respondent was working as a Lecturer in the said College at the relevant time. The appellant issued a charge-sheet to the respondent for certain acts of misconduct and after holding an inquiry, proposed to impose penalty of dismissal from service and referred the proposal with the record to the Director of Higher Education, Haryana, for approval as required under Section 7 of the Haryana Affiliated Colleges (Security of Service) Act, 1979 (in short, the Act). The Director,—*vide* his letter, dated 18th May, 1983, rejected the proposal submitted by the appellant on the ground that

the report of the Inquiry Officer suffered from procedural infirmities. Against the said order, the appellant filed an appeal before the State Government under Section 11 of the Act, and the said appeal was rejected by the State Government,—*vide* order, dated 26th October, 1983. The aforesaid order was challenged by the appellant in C.W.P. No. 387 of 1984 in this Court. A learned Single Judge of this Court by his judgment, dated 6th September 1984 (reported as *Hindu Education Society (Regd.)* v. *The State of Haryana, and others* (1), allowed the writ petition, quashing the aforesaid orders, dated 18th May, 1983 and 26th October, 1983, and remitted the matter to the Director for taking appropriate action under sub-section (4) of Section 7 of the Act. The operative portion of the said judgment reads as under :—

> "Thus while exercising powers under Section 7(4) of the Act on remittal of the matter to him, he *inter alia*, would take into consideration whether he should approve the proposed penalty or reduce it to the extent permissible under the rules."

The parties through their counsel were directed to put in appearance before the Director, Higher Education, Haryana, on 10th October, 1984. It will be relevant to point out here that the aforesaid judgment of the learned Single Judge was challenged by the respondent in L.P.A. No. 1132 of 1984, which was dismissed on 11th March, 1985.

(3) After hearing the parties, the Director, Higher Education, accepted the proposal of the appellant,—*vide* his order, dated 5th September, 1985 but converted the penalty of dismissal from service into simple termination of services. The relevant portion from the order passed by the Director is reproduced herein below :

> "In the result, there is absolutely no doubt in my mind that the Management must be allowed to get rid of Shri Pasrija. However, although the conduct of Shri Pasrija has been most reprehensible and deserves no leniency. I feel that it would be rather harsh to impose upon him the penalty of dismissal which will debar him from future employment also. I accordingly, accept the proposal of the Management to the extent that the penalty of termination of services may be imposed upon Shri S. S. Pasrija with

(1) 1984 (3) S.L.R. 717.

the hope that he will learn a lesson and put in better performance in work and conduct in a job which he might get elsewhere."

(4) Pursuant to the order dated 5th September, 1985, passed by the Director, Higher Education, the appellant-Management passed the formal order of terimnation on 4th October, 1985. Aggrieved by the order, dated 5th Septtmber, 1985, passed by the Director, Higher Education, the respondent preferred the revision petition before the State Government, under Section 11 of the Act, which was considered and accepted,—*vide* order, dated 6th April, 1987, passed by Smt. Sharda Rani, the then Education Minister, Haryana. The relevant portion from the said order is reproduced herein below :

"At my own accord I made enquiries from Shri Subhash Kapoor and Dr. S. R. Madan, Principal, whether there was any complaint of any kind against the petitioner relating to conduct and discharge of duties since 1973 to 1981 when the present case had been started against him. They could not bring anything to my notice from which it could be gathered that the conduct of the petitioner was unbecoming during these long years prior to the present proceedings. At this stage, Shri Bali submitted that the bone of contention started when the petitioner refused to sign the salary register withoht receiving his salary.

For the above recorded reasons, the revision is accepted, the impugned order of the Director dated 5th September, 1985 is set aside and the proposal of the governing body is rejected. It is ordered that the petitioner be reinstated in service with all benefits and continuity of service."

(5) The appellant-Management challenged the afortsaid order, dated 6th April, 1987, passed by the Edcatiuon Minister, Haryana, in C.W.P. No. 2845 of 1987. The said writ pttition was allowed by a learned Single Judge of this Court,—*vide* judgment, dated 1st September, 1987. By this judgment, the order, dated 6th April, 1987, passed by the Education Minister, Haryana, was quashed, and the order, dated 5th September, 1985, passed by the Director, Higher Education, Haryana, was restored.

(6) The respondent Lecturer challenged the said judgment dated 1st September, 1987 in L.P.A. No. 25 of 1988, whiih was dismissed by a Division Bench of this Court,—*vide* judgment dated 17th

January 1990. It may be pointed out here that the respondent filed a review petition being C.M. No. 1044 of 1991 against the aforesaid order, dated 19th January, 1991 which was also dismissed by a Division Bench.

(7) During the pendency of the Civil Writ Petition No. 2845 of 1987, which, as stated herein above, was filed by the appellant Society against the order, dated 6th April, 1987, passed by the then Education Minister, Haryana, the respondent employee also filed a writ petition bearing No. C.W.P. No. 4383 of 1987 on 20th July, 1987, for quashing the order of suspension dated 14th November, 1981 and order 13th September, 1982, and order of termination, dated 4th October, 1985, passed by the appellant Management. A learned Single Judge of this Court by his judgment, dated 22nd September, 1993, allowed the writ petition and quashed the aforesaid orders, date 14th November, 1981, 13th September, 1982 and 4th October, 1985, and directed the Management to reinstate the respondent-employee in service with back wages and consequential benefits. The learned Judge rejected the contention of the appellant Management that the points raised in this writ petition stood already decided by a Division Bench of this Court,—*vide* judgment, dated 17th January, 1990 in Letters Patent Appeal No. 25 of 1988, and as such this writ petition was barred by the principle of *res judicata* Aggrieved by this judgment, dated 22nd September, 1991 the present appeal has been filed by the Management.

(8) Mr. Kapoor, learned Senior Counsel appearing on behalf of the appellant, submitted that in C.W.P. No. 2845 of 1987, the appellant-Management had challenged the order, dated 6th April, 1987, passed by the then Education Minister, Haryana, by which the Minister had quashed the order, dated 5th September, 1985, passed by the Director, Higher Education, Haryana and had ordered his reinstatement in service with all benefits. He further submitted that the employee in his written statement had clearly contended that the order terminating his services, passed on 4th October, 1985, was not legal as the so-called governing body was not competent to pass the order. He then submitted that the learned Single Judge, after hearing the parties, accepted C.W.P. No. 2845 of 1987 and quashed the order, dated 6th April, 1987 passed by the Minister and restored the order, dated 5th September, 1985, passed by the Director, Higher Education, in terms of which the proposal of the Management was accepted to the extent of imposition of penalty of termination of services of the employee and thereafter a formal order of

termination was issued by the Management on 4th October, 1985. He further submitted that the aforesaid judgment passed by the learned Single Judge was upheld by the Division Bench in L.P.A. No. 25 of 1988, filed by the employee. He therefore, contended that the respondent-employee could not challenge the order of termination again in C.W.P. No. 4383 of 1987, filed by him, and the learned Single Judge erred in holding that the said writ petition was not barred by the principle of *res judicata*.

(9) Respondent No. 1, who appeared in person, submitted that in the earlier writ petition No. 2845 of 1987, filed by the Management, point in issue was the acceptance of the proposal of the Management regarding termination of his services, but formal order of termination, dated 4th October, 1985, passed by the Management, was not the subject matter of that writ petition and in the writ petition, C.W.P. No. 4383 of 1987, filed by him, he had challenged the formal order of termination, dated 4th October, 1985, and in addition, he had also challenged the order of suspension, dated 14th November, 1981 and 13th September, 1982. He, therefore, contended that the principle of *res judicata* was not applicable to the facts of the present case. In support of his contention, he placed reliance on two judgments of the Supreme Corut in *Amalgated Coalfields Ltd. another* v. *Janapada Sabha Chhindwara and others* (2), *Ishar Singh* v. *Sarwan Singh and others* (3), and a judgment of this Court in *Naresh Chand Advocate, Patiala* v. *Punjab State Electricity Board* (4). He further submitted that mere raising of a question was not covered by the principle of *res judicata*. In support of this submission, he relied on a judgment of a Full Bench of Allahabad High Court, reported as *Sita and others* v. *State of U.P. and others* (5).

(10) Respondent No. 1 also submitted that since the order of termination, dated 4th October, 1985 was not passed by the competent authority, the same was illegal and invalid. He further submitted that there was no clause in the letter of appointment authorising the Management to suspend nor there was any statutory rule in this regard and as such he was entitled to full wages instead of subsistence allowance for the period he remained under suspension. In support of this submission, he relied on a judgment of this

(2) A.I.R. 1964 S.C. 1013.
(3) A.I.R. 1965 S.C. 948.
(4) 1993 (1) P.L.R. 355.
(5) A.I.R. 1969 All. 342.

Court in *Mohd. Kifayatulla* v. *The Punjab Wakf Board, Ambala Cantt.* (6), and a judgment of the Andhra Pradesh High Court in *Zonal Manager Food Corporation of India and others* v. *Khaleel Ahmed Siddiqui* (7).

(11) We have given our anxious consideration to the submissions made by the learned counsel for the appellant as well as by the respondent, who appeared in person and have perused the records of the case. As stated earlier, the Director, Higher Education, Haryana, Chandigarh, by his order, dated 5th September, 1985, accepted the proposal of the Management to the extent of imposition of penalty of termination of services of the respondent. The said order in revision was set aside by the then Education Minister by her order, dated 6th April 1987, and the respondent was directed to be reinstated in service with all benefits. Thereafter, the Management challenged the aforesaid order dated 6th April, 1987, passed by the then Education Minister, Haryana in C.W.P. No. 2845 of 1987, which was allowed by a learned Single Judge of this Court,—*vide* judgment, dated 1st September, 1987 and the order dated 6th April, 1987 passed by the then Education Minister was quashed, and the order, dated 5th September, 1985, passed by the Director, Higher Education, Haryana, was restored, From these facts, it is clear that the termination of the services of the respondent-employee was directly and substantially in issue in C.W.P. No. 2845 of 1987. The judgment in C.W.P. No. 2845 of 1987 was upheld in appeal by a Division Bench of this Court,—*vide* judgment, dated 17th January, 1990, in L.P.A. No. 25 of 1988. From the said judgment, it is clear that it was contended on behalf the respondent-employee that the order of termination passed by the Director, Higher Education, Haryana, had been rightly set aside by the then Education Minister, exercising the powers of the State Government under Section 11 of the Act. In C.W.P. No. 2845 of 1987 the respondent-employee in para 8 of his written statement had contended that the order terminating his services was passed on 4th October, 1985 by the so-called Governing Body which was not legal entity and was, therefore, not competent to pass the order of termination. The respondent employee, therefore, was estopped to challenge the order of the termination of his services again in C.W.P. No. 4383 of 1987, filed by him in terms of Section 11 of the Code of Civil Procedure as the matter regarding termination of his services was directly and substantially in issue in C.W.P. No. 2845 of 1987,

(6) 1980 (3) S.L.R. 295.

(7) 1982 Labour Industrial Cases 1140.

filed by the Management and L.P.A. No. 25 of 1988 filed by the respondent. The view we have taken finds full support from a recent judgment of the Supreme Court in *P. K. Vigayan* v. *Kamalakshi Amma* (8).

(12) We are, therefore, of the view that the learned Single Judge committed an error in holding that C.W.P. No. 4383 of 1987 filed by the respondent-employee challenging the order of termination of his services was not barred by the principle of *res judicata,* and as such, the impugned judgment quashing the order of termination dated 4th October, 1985 passed by the learned Single Judge, is not sustainable.

(13) As regards the contention of the respondent-employee that he was entitled to full wages for the period of suspension as there was no statutory rule empowering the Management to suspend him, it will be relevant to refer to Section 7-A of the Act, which reads as under :

> "7A. *Continuance of suspension beyond six months.*—(1) In case the Managing Committee of an affiliated college considers it expedient to keep an employee under suspension beyond the period of six months, it shall submit a detailed report to the Director at least one month before the expiry of the period of six months specifying reasons warranting the extension of the suspension period of the employee beyond six months.
>
> (2) After considering the report under sub-section (1), the Director shall pass an order whether the extension be granted or not. In the event of his refusal to grant the extension, the Managing Committee shall reinstate the employee within a fortnight from the date of receipt of the order, failing which the employee concerned shall be deemed to have been reinstated on the expiry of the aforesaid period."

(14) In terms of Section 7A, in case the Managing Committee of an affiliated College considers it expedient to keep an employee under suspension beyond the period of six months, it is required to submit a detailed report to the Director, at least one month before the expiry of period of six months specifying the reasons warranting the extension of the suspension period. From the record, we do not find that

(8) A.I.R. 1994 S.C. 2145.

any such report was sent by the Managing Committee to the Director, Higher Education one month before the expiry of the period of six months and the approval of the Director, Higher Education, was not obtained within the specified period. In view of these facts, the respondent-employee shall be entitled to full wages for the period of suspension excluding the period of six months from 14th November, 1981, the date on which he was placed under suspension by the Management. It may be pointed out here that this point was not the subject matter of the earlier writ petition No. 2845 of 1987, which was filed by the Management. As the suspension was not the subject matter of that writ petition, the principle of *res judicata* is not applicable with regard to the challenge to the suspension orders.

(15) In view of the above discussion, the impugned judgment passed by the learned Single Judge is set aside and the appeal of the Management is allowed to the extent that the order of termination of the services of the respondent-employee could not be challenged in C.W.P. No. 4383 of 1987 filed by the respondent-employee. The respondent-employee would, however, be entitled to the full wages for the period of suspension excluding the period of six months as stated herein above and the appellant-Management is directed to make the payment of full salary to the respondent No. 1, with regard to the period of suspension as stated above, after deducting the amount of subsistence allowance already paid to him, within two months from the date of this order. The parties are, however, left to bear their own costs.

J.S.T.

Before Hon'ble M. S. Liberhan, Amarjeet Chaudhary & H. S. Bedi, JJ.

JAI SINGH & OTHERS,—*Petitioners.*

versus

STATE OF HARYANA,—*Respondent.*

C.W.P. No. 5877 of 1992

18th January, 1995

Constitution of India, 1950—Punjab Village Common Lands (Regulation) Act, 1961—S. 2(g) as amended by Punjab Village Commons Land (Regulation) Haryana Amendment Act, 1992—(Haryana Act No. 9 of 1992)—Ultravires the Constitution of India.