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**IN THE HIGH COURT OF KARNATAKA AT BANGALORE**

**(ORIGINAL JURISDICTION)**

**W.P. NO. /2020**

**BETWEEN:**

PSBB Learning Leadership Academy

.....**Petitioner**

**AND**

Mrs. Barnali Rout and Another

.....**Respondents**

**SYNOPSIS**

The Petitioner submits that it is a premier educational institution, affiliated to the Central Board of Secondary Education (CBSE), New Delhi. It is among the few in the world to bring technology right into every classroom and transform the learning experience for students. The Petitioner school was established in Bangalore in the year 2006 and ever since then, thousands of students have successfully graduated and built successful careers.

The Petitioner further submits that the 1<sup>st</sup> Respondent had applied for a teaching post in the Petitioner school and was selected for the post of Primary Teacher and subsequently, the 1<sup>st</sup> Respondent was issued the Offer of Appointment dated 08.07.2008. The Petitioner further submits that after completing her probationary period, the 1<sup>st</sup> Respondent's appointment was confirmed on 13.07.2009 for the post of Teacher (Nursery/Primary). The Petitioner submits that the 1<sup>st</sup> Respondent was bound by the Petitioner school's Contract of Service and Service Rules for teaching and administrative staff as per CBSE Bye Laws and the school Society Rules and Regulations in force. Furthermore, the 1<sup>st</sup> Respondent's employment would be considered as having been voluntarily terminated without the need for giving any notice if she had remained absent without leave or remained absent beyond the period of leave originally granted or subsequently extended, unless she returned to work within eight days of the commencement of such absence and gave a satisfactory explanation.

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The Petitioner submits that it had had spent considerable time and resources to get the 1<sup>st</sup> Respondent trained so as to ensure that she was suitable for her post, since the 1<sup>st</sup> Respondent did not possess any relevant Professional Qualifications and experience.

The Petitioner submits that on 22.08.2013, a Class VI student by the name of Ms. Diya Pai, had changed her marks in some subject papers and this led to an enquiry by the teachers. Out of fear of being caught in the enquiry, the student managed to reach the window sill of the school building located between the ground and the first floor and threatened to jump off. As per the Standard Operating Procedure, the administrative staff, the Physical Education teachers and other staff members reached the ground floor and engaged the student in conversation so as to talk her out of taking such an extreme step.

The Petitioner submits that in total non-compliance of the Standard Operating Procedure, the 1<sup>st</sup> Respondent voluntarily and without the direct or indirect instructions and/or knowledge of anyone of her fellow staff members or the school management, attempted to risk going out onto the window sill to save the student in a daring and reckless manner. Whilst attempting to do so, the 1<sup>st</sup> Respondent lost her footing and fell to the ground floor which resulted in grave injuries and on seeing this, the student also panicked and jumped. The Petitioner submits that had the 1<sup>st</sup> Respondent followed protocol, the actions of the school management and the staff members would have been fruitful and they would have prevented the student from jumping and the 1<sup>st</sup> Respondent also wouldn't be facing her current unfortunate predicament.

The Petitioner submits that upon the 1<sup>st</sup> Respondent's unexpected fall to the ground, the school management followed all the necessary medical protocols by providing immediate first aid by a qualified nurse available at the school premises and immediately thereafter, the school management admitted the 1<sup>st</sup> Respondent to the nearest super specialty

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hospital, i.e. Fortis Hospital at Bannerghatta Road for further treatment on 22.08.2013 at 3:44 P.M.

The Petitioner further submits that, as a responsible educational institution and out of sympathy and compassion, the Petitioner voluntarily reimbursed the entire hospital bill of the 1<sup>st</sup> Respondent amounting to **Rs. 6,03,603/-** without any delay or questions asked vide a Payment Voucher dated 06.11.2013.

The Petitioner submits that it conducted an internal enquiry into the matter in 2013 itself wherein it is pertinent to mention that some of the staff members have, in their written testimonies, confirmed the fact that the school protocol was being strictly followed and many of them were trying to prevent the student from jumping off the school building. Since the spot where the student stood was in close proximity to the Physics lab, few of the staff members were also trying to pull her through the window of the Physics Lab.

The Petitioner submits that despite the 1<sup>st</sup> Respondent having gone incommunicado for almost a year from the date of reimbursement of the hospital bills, the Petitioner retained her on the rolls without any action being taken and paid her a total sum of **Rs. 5,58,476/-** towards her salary from the date of the accident on 22.08.2013 to May 2015 on humanitarian grounds. The Petitioner submits that the Petitioner school has incurred a total expenditure of **Rs. 11,62,079/-** on the 1<sup>st</sup> Respondent in good faith.

The Petitioner submits that despite numerous communications to the 1<sup>st</sup> Respondent, the 1<sup>st</sup> Respondent failed to respond or attend to her job thereafter. Ultimately, since the students of the Petitioner school were getting affected, the Petitioner offered her a teaching assignment as a retainer for a period of 6 months keeping her fragile health condition in mind and the strenuous nature of regular teaching work. The Petitioner submits that since the 1<sup>st</sup> Respondent failed to communicate her

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decision whether she was interested in taking up the teaching assignment as a retainer for a period of 6 months, the Petitioner was constrained to separate her from the school at the end of May 2015.

When things stood thus, after a considerable delay of almost 4 years, the Petitioner was shocked to receive a Notice from the 2<sup>nd</sup> Respondent in Case No. 21/2019-20 initiated by the 1<sup>st</sup> Respondent under the Act. In the said Complaint, the 1<sup>st</sup> Respondent sought for all her alleged accruals and rights to be granted to her without specifically setting out any specific demands. It is pertinent to point out that the 1<sup>st</sup> Respondent has malafidely suppressed the factum of offer of a retainer role throughout in the proceedings before the 2<sup>nd</sup> Respondent. Thereafter, the Petitioner appeared before the 2<sup>nd</sup> Respondent and filed its reply dated 10.06.2019. It would not be out of place to mention that the Petitioner once again took a very sympathetic and humanitarian view, and offered her employment as an administrative support staff with consolidated pay of Rs. 15,000/- (Rupees Fifteen Thousand Only) per month considering the 1<sup>st</sup> Respondent's welfare since she was 90% disabled and to ensure that she was not put through any physical strain. This offer was rejected by the 1<sup>st</sup> Respondent citing an unfounded basis of discrimination as she was disabled and she demanded that she be reinstated as a Teacher.

The Petitioner submits that subsequently, the 1<sup>st</sup> Respondent filed a Rejoinder dated 28.08.2019 seeking for exorbitant amounts of almost Rs. 60 Lakhs which were not mentioned in her original Complaint. To this, the Petitioner filed its Sur Rejoinder dated 23.12.2019.

The Petitioner submits that the 2<sup>nd</sup> Respondent passed the impugned Order dated 12.06.2020 without jurisdiction and without assigning any reasons directing the Petitioner to reinstate the 1<sup>st</sup> Respondent as a Teacher with all necessary facilities, benefits and emoluments right from 22.08.2013 till date and to further pay an arbitrary and ad hoc sum of **Rs. 10,00,000/-** towards her medical expenses and future expenses within a period of 45 days and inform the 2<sup>nd</sup> Respondent thereafter.

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The Petitioner submits that the 2<sup>nd</sup> Respondent fails to mention in the impugned Order as to on what basis or logic does he arrive at an arbitrary and ad hoc sum of Rs. 10,00,000/- to be paid to the 1<sup>st</sup> Respondent. The Petitioner which has already stretched its financial capacity by voluntarily incurring a sum of Rs. 11,62,079/- without any legal liability to do so, is now being asked to pay an astronomical and irrational sum for no fault of it.

The Petitioner submits that if the 1<sup>st</sup> Respondent was truly aggrieved, her only remedy was under the Karnataka Education Act, 1983 by filing an appeal in terms thereof against her termination within three months of the same. The 1<sup>st</sup> Respondent who has accepted her termination and kept quiet for a period of almost 4 years, has belatedly filed the Complaint before the 2<sup>nd</sup> Respondent in order to get over the fact that her remedy under the Karnataka Education Act, 1983 is wholly barred by limitation.

The 2<sup>nd</sup> Respondent has erringly invoked and interpreted Section 21 of the Act although it does not give the 2<sup>nd</sup> Respondent the authority to pass orders for reinstatement and compensation towards the 1<sup>st</sup> Respondent. The only penalty prescribed under Section 89 of the Act for failure to have an Equal Opportunity Policy is a fine which may extend to Rs. 10,000/- for a first time contravention after trial by a Special Court designated in that regard under Section 84 of the Act. Therefore, the 2<sup>nd</sup> Respondent has passed the impugned Order without jurisdiction.

The Petitioner herein, being aggrieved by the illegal action of the 2<sup>nd</sup> Respondent in passing the impugned Order dated 12.06.2020 vide Annexure A is filing the present Writ Petition.

Bangalore

Date: 0 .08.2020

Advocate for Petitioner

**(B.K. Sampath Kumar)**



**IN THE HIGH COURT OF KARNATAKA AT BANGALORE**

**(ORIGINAL JURISDICTION)**

**W.P. NO. /2020**

**BETWEEN:**

**PSBB Learning Leadership Academy,**

No. 52, Sahara Deepika Road,

Laxmipura, Off Bannerghatta Road,

Sakalvara Post, Jigani Hobli,

Bangalore - 560083.

Represented by its Principal,

Mrs. Mahalaxmi Kumar.

**.....PETITIONER**

**AND**

1) **Mrs. Barnali Rout,**

W/o. Debabrata Rout,

Aged about 42 years,

Residing at Flat No. 111,

Raj Paradise Apts., Bilakahalli,

Bannerghatta Road,

Bangalore - 560076.

2) **The State Commissioner,**

Office of the State Commissioner for Persons with Disabilities,

Karnataka,

No. 55, Abhaya Sankeerna, 2<sup>nd</sup> Floor,

Karnataka Slum Development Board Building,

Risaldar Street (Platform Road),

Sheshadripuram, Bangalore - 560020.

**.....RESPONDENTS**

**MEMORANDUM OF WRIT PETITION UNDER ARTICLES**

**226 AND 227 OF THE CONSTITUTION OF INDIA**

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The Petitioner named above humbly submits as follows:

1. The Petitioner herein, being aggrieved by the impugned Order dated 12.06.2020 in Case No. 21/2019-20 passed by the 2<sup>nd</sup> Respondent under The Rights of Persons with Disabilities Act, 2016 (hereinafter referred to as 'the Act'), on the basis of the Complaint filed by the 1<sup>st</sup> Respondent on 07.02.2019, is filing the present Writ Petition. The impugned Order is produced herewith and marked as **Annexure A**.

### FACTS OF THE CASE

2. The Petitioner submits that it is a premier educational institution rated amongst the best schools in India for providing value based education. The PSBB Learning Leadership Academy (PSBB) group of schools, affiliated to the Central Board of Secondary Education (CBSE), New Delhi, is among the few in the world to bring technology right into every classroom and transform the learning experience for students. The school's primary aim is to integrate academic excellence with value education and respect for our rich cultural heritage and ethos. The Petitioner school was established in Bangalore in the year 2006 and ever since then, thousands of students have successfully graduated and built successful careers.
3. The Petitioner further submits that the 1<sup>st</sup> Respondent had applied for a teaching post in the Petitioner school and was selected for the post of Primary Teacher and subsequently, the 1<sup>st</sup> Respondent was issued the Offer of Appointment dated 08.07.2008. The Petitioner further submits that after completing her probationary period, the 1<sup>st</sup> Respondent's appointment was confirmed on 13.07.2009 for the post of Teacher (Nursery/Primary). A copy of the Confirmation of Appointment Letter dated 13.07.2009 along with the terms and conditions of appointment are produced herewith and marked as **Annexure B**. The Petitioner submits that the 1<sup>st</sup> Respondent was bound by the Petitioner school's Contract of Service and Service



Rules for teaching and administrative staff as per CBSE Bye Laws and the school Society Rules and Regulations in force. The 1<sup>st</sup> Respondent could be terminated by giving three months' notice in writing or three months salary in lieu of notice period. Furthermore, the 1<sup>st</sup> Respondent's employment would be considered as having been voluntarily terminated without the need for giving any notice if she had remained absent without leave or remained absent beyond the period of leave originally granted or subsequently extended, unless she returned to work within eight days of the commencement of such absence and gave a satisfactory explanation. The 1<sup>st</sup> Respondent's employment could also be terminated without the need for giving any notice or salary in lieu thereof in the case of continued ill health.

4. The Petitioner submits that the 1<sup>st</sup> Respondent was a graduate but without any relevant Professional Qualification and experience at the time of joining the Petitioner. Therefore, the Petitioner school encouraged the 1<sup>st</sup> Respondent to get a B.Ed Degree, which is a mandatory professional degree required to work as a teacher. It is pertinent to mention that the Petitioner had spent considerable time and resources to get the 1<sup>st</sup> Respondent trained so as to ensure that she was suitable for her post.

5. The Petitioner submits that on 22.08.2013, a Class VI student by the name of Ms. Diya Pai, had changed her marks in some subject papers and this led to an enquiry by the teachers. Out of fear of being caught in the enquiry, the student managed to reach the window sill of the school building located between the ground and the first floor and threatened to jump off. The Petitioner further submits that immediately on noticing the attempts made by the student, various teachers and other staff informed the administrative staff and the Physical Education teachers as per the safety protocol of the school. As per the Standard Operating Procedure, the administrative staff, the Physical Education teachers and other staff members reached the

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ground floor and engaged the student in conversation so as to talk her out of taking such an extreme step.

6. The Petitioner submits that in total non-compliance of the Standard Operating Procedure, the 1<sup>st</sup> Respondent voluntarily and without the direct or indirect instructions and/or knowledge of anyone of her fellow staff members or the school management, attempted to risk going out onto the window sill to save the student in a daring and reckless manner. Whilst attempting to do so, the 1<sup>st</sup> Respondent lost her footing and fell to the ground floor which resulted in grave injuries. On seeing this, the student also panicked and jumped, thereby totally undermining the efforts of the school authorities and staff members. However, since the school had taken steps to protect the student, they were able to minimize her injuries to some minor wounds. The Petitioner submits that had the 1<sup>st</sup> Respondent followed protocol, the actions of the school management and the staff members would have been fruitful and they would have prevented the student from jumping and the 1<sup>st</sup> Respondent also wouldn't be facing her current unfortunate predicament.
7. The Petitioner submits that upon the 1<sup>st</sup> Respondent's unexpected fall to the ground, the school management followed all the necessary medical protocols by providing immediate first aid by a qualified nurse available at the school premises. Immediately thereafter, the school management admitted the 1<sup>st</sup> Respondent to the nearest super specialty hospital, i.e. Fortis Hospital at Bannerghatta Road for further treatment on 22.08.2013 at 3:44 P.M. The newspaper report of the accident is produced herewith and marked as **Annexure C**.
8. The Petitioner further submits that, as a responsible educational institution and out of sympathy and compassion, the Petitioner voluntarily reimbursed the entire hospital bill of the 1<sup>st</sup> Respondent amounting to **Rs. 6,03,603/- (Rupees Six Lakhs Three Thousand**

**Six Hundred and Three Only)** without any delay or questions asked vide a Payment Voucher dated 06.11.2013, a copy of which is produced herewith and marked as **Annexure D**. The copy of the Fortis Hospital Inpatient Bill dated 22.09.2013 is produced herewith and marked as **Annexure E**. The Petitioner submits that the Discharge Summary dated 22.09.2013 and the Letter dated 17.05.2014 issued by Fortis Hospital are produced herewith and marked as **Annexures F and G**, respectively.

9. The Petitioner submits that it conducted an internal enquiry into the matter in 2013 itself wherein it is pertinent to mention that some of the staff members have, in their written testimonies, confirmed the fact that the school protocol was being strictly followed and many of them were trying to prevent the student from jumping off the school building. Since the spot where the student stood was in close proximity to the Physics lab, few of the staff members were also trying to pull her through the window of the Physics Lab. This abovementioned chronology of events can be captured in the written testimonies of the individual staff members, which are produced herewith and marked as **Annexures H to H4 series**.

10. The Petitioner submits that despite the 1<sup>st</sup> Respondent having gone incommunicado for almost a year from the date of reimbursement of the hospital bills, the Petitioner retained her on the rolls without any action being taken and continued to pay her monthly salary solely out of goodwill and compassion. The Petitioner submits that despite the 1<sup>st</sup> Respondent not presenting herself for her teaching duties, the Petitioner paid her a total sum of **Rs. 5,58,476/- (Rupees Five Lakhs Fifty Eight Thousand Four Hundred and Seventy Six Only)** towards her salary from the date of the accident on 22.08.2013 to May 2015 on humanitarian grounds. The Petitioner submits that the Petitioner school has incurred a total expenditure of **Rs. 11,62,079/- (Rupees Eleven Lakhs Sixty Two Thousand and Seventy Nine Only)** on the 1<sup>st</sup> Respondent in good faith. The Petitioner submits

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that it had cooperated and supported the 1<sup>st</sup> Respondent in the best possible manner to the largest extent possible.

11. The Petitioner submits that despite numerous communications to the 1<sup>st</sup> Respondent, the 1<sup>st</sup> Respondent failed to respond or attend to her job thereafter. Ultimately, since the students of the Petitioner school were getting affected, the Petitioner offered her a teaching assignment as a retainer for a period of 6 months keeping her fragile health condition in mind and the strenuous nature of regular teaching work. A copy of the trail emails between the Petitioner and the 1<sup>st</sup> Respondent's husband in 2014 and 2015 are produced herewith and marked as **Annexure J series**. The Petitioner submits that since the 1<sup>st</sup> Respondent failed to communicate her decision whether she was interested in taking up the teaching assignment as a retainer for a period of 6 months, the Petitioner was constrained to separate her from the school at the end of May 2015. It is pertinent to point out that it is clear from the email dated 14.05.2015 that the Petitioner's school's management had patiently waited till then for the 1<sup>st</sup> Respondent to resume duty in whatsoever manner that she desired and had given her full freedom and liberty with regard to the same and only since she had not been able to attend even a single day, the Petitioner was constrained to offer her the retainer role for 6 months to be taken up at her convenience and comfort, which could be reviewed periodically. It was also communicated that this was meant for the 1<sup>st</sup> Respondent to be usefully engaged and to pave the way for her recovery.

12. When things stood thus, after a considerable delay of almost 4 years, the Petitioner was shocked to receive a Notice from the 2<sup>nd</sup> Respondent in Case No. 21/2019-20 initiated by the 1<sup>st</sup> Respondent under the Act. A copy of the 1<sup>st</sup> Respondent's Complaint filed on 07.02.2019 is produced herewith and marked as **Annexure K**. In the said Complaint, the 1<sup>st</sup> Respondent sought for all her alleged accruals and rights to be granted to her without specifically setting out any

specific demands. It is pertinent to point out that the 1<sup>st</sup> Respondent has malafidely suppressed the factum of offer of a retainer role throughout in the proceedings before the 2<sup>nd</sup> Respondent. Thereafter, the Petitioner appeared before the 2<sup>nd</sup> Respondent and filed its reply dated 10.06.2019, a copy of which is produced herewith and marked as **Annexure L**. It would not be out of place to mention that the Petitioner once again took a very sympathetic and humanitarian view, and offered her employment as an administrative support staff with consolidated pay of Rs. 15,000/- (Rupees Fifteen Thousand Only) per month considering the 1<sup>st</sup> Respondent's welfare since she was 90% disabled and to ensure that she was not put through any physical strain. This offer was rejected by the 1<sup>st</sup> Respondent citing an unfounded basis of discrimination as she was disabled and she demanded that she be reinstated as a Teacher.

13. The Petitioner submits that subsequently, the 1<sup>st</sup> Respondent filed a Rejoinder dated 28.08.2019 seeking for exorbitant amounts of almost Rs. 60 Lakhs which were not mentioned in her original Complaint. A copy of the 1<sup>st</sup> Respondent's Rejoinder dated 28.08.2019 is produced herewith and marked as **Annexure M**. To this, the Petitioner filed its Sur Rejoinder dated 23.12.2019, a copy of which is produced herewith and marked as **Annexure N**.

14. The Petitioner submits that the 2<sup>nd</sup> Respondent passed the impugned Order dated 12.06.2020 without jurisdiction and without assigning any reasons directing the Petitioner to reinstate the 1<sup>st</sup> Respondent as a Teacher with all necessary facilities, benefits and emoluments right from 22.08.2013 till date and to further pay an arbitrary and ad hoc sum of **Rs. 10,00,000/- (Rupees Ten Lakhs Only)** towards her medical expenses and future expenses within a period of 45 days and inform the 2<sup>nd</sup> Respondent thereafter.

15. The Petitioner submits that no other writ or other proceeding has been filed or is pending in respect of the same cause of action.

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16. The Petitioner submits that the Petitioner being aggrieved and not having any other alternative or efficacious remedy, the Petitioner is approaching this Hon'ble Court by way of this Writ Petition, on the following amongst other grounds.

#### GROUNDS

17. The Petitioner submits that the impugned Order passed by the 2<sup>nd</sup> Respondent is one sided, and not sustainable, either in law or on facts. The same was issued mechanically without application of mind and is hence, liable to be set aside.

18. The Petitioner submits that the impugned Order passed by the 2<sup>nd</sup> Respondent is bald and baseless. No cogent reasons have been attributed to substantiate the impugned Order in violation of the Apex Court decision in State of Punjab v. Bhag Singh reported in **(2004) 1 SCC 547**.

19. The 2<sup>nd</sup> Respondent fails to mention in the impugned Order as to on what basis or logic does he arrive at an arbitrary and ad hoc sum of Rs. 10,00,000/- to be paid to the 1<sup>st</sup> Respondent. The Petitioner which has already stretched its financial capacity by voluntarily incurring a sum of Rs. 11,62,079/- without any legal liability to do so, is now being asked to pay an astronomical and irrational sum for no fault of it.

20. The Petitioner submits that the Petitioner is undoubtedly an unaided private educational institution. Under the circumstances, if indeed the 1<sup>st</sup> Respondent was truly aggrieved, her only remedy was under the Karnataka Education Act, 1983 by filing an appeal in terms thereof against her termination within three months of the same. The 1<sup>st</sup> Respondent who has accepted her termination and kept quiet for a period of almost 4 years, has belatedly filed the Complaint before the

2<sup>nd</sup> Respondent in order to get over the fact that her remedy under the Karnataka Education Act, 1983 is wholly barred by limitation.

21. Furthermore, even under Article 113 to the Schedule to the Limitation Act, 1963, when no period of limitation is provided elsewhere, the suit must be filed within 3 years from when the right to sue, if any, accrues and hence, the Complaint before the 2<sup>nd</sup> Respondent is squarely hit by limitation.

22. The Petitioner submits that the 1<sup>st</sup> Respondent has not approached the 2<sup>nd</sup> Respondent with clean hands and she has suppressed several material facts in her Complaint and Rejoinder in an attempt to gain misplaced sympathy. The 1<sup>st</sup> Respondent has failed to disclose the factum of offer of a retainer teacher role for a period of 6 months in March 2015 itself throughout the proceedings before the 2<sup>nd</sup> Respondent and she has further failed to disclose the reasons for the delay of almost 4 years in filing the said Complaint. The 1<sup>st</sup> Respondent has also not disclosed whether she had attempted to apply for other jobs in other institutions or whether she is earning any money from other jobs post May 2015. In *S.P. Chengalvaraya Naidu (dead) by LRs. vs. Jagannath (dead) by LRs. and Others* reported in **(1994) 1 SCC 1**, it has been held by the Hon'ble Supreme Court as follows:

*"The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean-hands. We are constrained to say that more often than not, process of the court is being abused. Property grabbers, tax evaders, bank loan dodgers and other unscrupulous persons from all walks of life find the court process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation."*

The 1<sup>st</sup> Respondent has also suppressed the factum of payment of the hospital bills & salary totally amounting to Rs. 11,62,079/- in her Complaint with malafide intentions.

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23. The Petitioner submits that even if it is assumed for a moment that despite trying, the 1<sup>st</sup> Respondent was unable to secure any suitable employment anywhere for the last 5 years, it is a practical reality and clear that she is unemployable due to her 90% physical disability and there is no discrimination whatsoever on the part of the Petitioner. The 1<sup>st</sup> Respondent has failed to sue anyone else or the government for not giving her a suitable job of her liking and despite the largesse already granted to her by the Petitioner, she is targeting the Petitioner once again solely out of greed. The Petitioner in the interests of the students and the 1<sup>st</sup> Respondent, offered her a retainer role in 2015 and even now offered her an administrative support staff role which the Petitioner has flatly refused. On the contrary, the 1<sup>st</sup> Respondent has placed absurd demands such as working only for 3 hours every alternate day and she wants to be provided transport in a car to and fro from her house to the school, flexible timings and an on-call doctor service or ambulance specifically for her, which are not feasible for any private entity to provide let alone the Petitioner educational institution.

24. The 2<sup>nd</sup> Respondent has overlooked the fact that the 1<sup>st</sup> Respondent has not made out a case that any legal or constitutional right of hers has been violated by the Petitioner. The 2<sup>nd</sup> Respondent has passed the impugned Order purely out of sympathy and has targeted the Petitioner for what was a sheer accident arising out of the 1<sup>st</sup> Respondent's own actions and misjudgement.

25. The Petitioner further submits that the 2<sup>nd</sup> Respondent has exceeded his powers and functions prescribed under Section 80 of the Act as he has no jurisdiction whatsoever to pass an order in terms of the impugned Order directing a private establishment to reinstate the 1<sup>st</sup> Petitioner and further pay her a huge sum of Rs. 10,00,000/-. The 2<sup>nd</sup> Respondent does not even mention under what section of the Act is he passing the impugned Order.



26. The 2<sup>nd</sup> Respondent has erringly invoked and interpreted Section 21 of the Act although it is crystal clear that this provision is applicable only to the extent that "every establishment shall have an Equal Opportunity Policy", but this does not give the 2<sup>nd</sup> Respondent the authority to pass orders for reinstatement and compensation towards the 1<sup>st</sup> Respondent. The only penalty prescribed under Section 89 of the Act for failure to have an Equal Opportunity Policy is a fine which may extend to Rs. 10,000/- for a first time contravention after trial by a Special Court designated in that regard under Section 84 of the Act. Therefore, the 2<sup>nd</sup> Respondent has passed the impugned Order without jurisdiction.

27. The Petitioner submits that the accident occurred on 22.08.2013 and the 1<sup>st</sup> Respondent was separated from the school on 31.05.2015 and thereby, the cause of action, if any, arose on those dates. The Petitioner further submits that the Act came into effect only on 19.04.2017, the Rights of Persons with Disabilities Rules, 2017 were gazetted on 15.06.2017 and the Karnataka State Rights of Persons with Disabilities Rules, 2019 were notified only on 30.08.2019. It is trite to mention that the 2<sup>nd</sup> Respondent has passed the impugned Order despite the fact that the Act and Rules had not come into force at that point in time and it has no retrospective operation and as such, the impugned Order passed by the 2<sup>nd</sup> Respondent is unsustainable under law.

28. Under Section 81 of the Act, when the 2<sup>nd</sup> Respondent makes a recommendation under Section 80 (b) of the Act, the appropriate authority may take necessary action and inform him of the action taken within 3 months from the date of receipt of the recommendation or it may convey its reasons for non-acceptance. Hence, the recommendations of the 2<sup>nd</sup> Respondent are non-mandatory in nature and unenforceable.

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29. Although Section 81 of the Act provides for a period of 3 months to the appropriate authority to accept or reject the recommendation of the 2<sup>nd</sup> Respondent under Section 80 (b) of the Act, the 2<sup>nd</sup> Respondent has arbitrarily only provided a period of 45 days to the Petitioner to comply with the impugned Order.
30. The 2<sup>nd</sup> Respondent has not even considered the fact that the Petitioner has offered the 1<sup>st</sup> Respondent a suitable alternative role considering her physical limitations and frailties, and the impugned Order is liable to be set aside even for the vice of non-consideration of the materials on record.
31. The Petitioner submits that most of the directions, obligations and duties under the Act, fall upon the State to carry out. By a conjoint reading of the Act including its Preamble, the National Policy for Persons with Disabilities and the United Nations Convention on the Rights of Persons with Disabilities adopted in 2006, which came into effect in 2008, it is seen that most of the onus lies on the State to facilitate the protection of the rights of those who are disabled and to provide several facilities to them including economic and social. However, under Section 21 of the Act, private establishments are also expected to notify equal opportunity policies detailing measures proposed to be taken by them in pursuance of the provisions of Sections 19 and 20 of the Act which apply solely to Government establishments. Thus, it is seen that the same amounts to legislative over reach and it is not economically feasible for small private establishments to act in terms of Sections 19 and 20 of the Act nor do they have the necessary technical or scientific expertise or logistical capacity to adopt such measures. Even Section 23 of the Act provides for grievance redressal only in respect of Sections 19 and 20 of the Act.
32. Furthermore, under Section 35 of the Act, the appropriate government and the local authorities have a mandate to provide

incentives to employers in the private sector to employ persons with benchmark disability in their work force. However, no such incentive has been provided to the Petitioner and the 2<sup>nd</sup> Respondent is attempting to illegally thrust the responsibilities and obligations of the State onto the Petitioner.

33. It is also the duty of the 2<sup>nd</sup> Respondent to promote awareness of the rights of persons with disabilities and the safeguards available for their protection but not once has such an awareness program been conducted where the Petitioner has been made aware of its duties under the Act, which is a fairly recent legislation. Thus, it is seen that the State and its organs have grossly failed in their duties and are seeking to shift the burden on the Petitioner which is a private establishment duly paying its taxes.

34. Even if it is considered for the sake of argument that the Petitioner falls within the purview of the Act, a private school such as the Petitioner can publish an "equal opportunity policy" only once the appropriate Government has a dialogue with the private sector in order to help disabled people secure employment in the private sector, as per Paragraph 50 of the National Policy for Persons with Disabilities bearing No. 3-1/1993-DD.III dated 10.02.2006. Without any such dialogue, there is no mandate for the Petitioner to re-employ the 1<sup>st</sup> Respondent despite her incapacity to do the job and handle the rigours of a regular teaching job.

35. The 2<sup>nd</sup> Respondent has failed to consider the fact that to provide the 1<sup>st</sup> Respondent with the same job at her old salary would be unfair to the other teachers doing more work for the same salary. Furthermore, other teachers will be forced to take on the additional burden of doing the 1<sup>st</sup> Respondent's work without receiving extra remuneration for the same, which will be inequitable and lead to poor morale amongst the teachers.

36. The Petitioner submits that the 2<sup>nd</sup> Respondent has passed the impugned Order without jurisdiction as the Act is not applicable to the present scenario. The Petitioner further submits that on the perusal of the *pith and substance* of the Act, it is clear that the onus of care and welfare lies on the Government and it is not meant for private institutions to bear the burden of carrying out welfare measures at their cost. The Petitioner further submits that the Act was passed by the Parliament of India in order to give effect to and fulfil India's international obligations under the United Nations Convention on the Rights of Persons with Disabilities, which came into force in 2008.

37. The Petitioner submits that it had every right to terminate the employment of the 1<sup>st</sup> Respondent as she did not respond to the offers and did not report back to work despite giving her 21 months of leave. There was not even a confirmation forthcoming from the Respondent putting on record as to when she would return to work full time leaving the Petitioner in a state of limbo. In any case, in terms of her service terms and conditions, the 1<sup>st</sup> Respondent's employment would be considered as having been voluntarily terminated without the need for giving any notice if she had remained absent without leave or remained absent beyond the period of leave originally granted or subsequently extended, unless she returned to work within eight days of the commencement of such absence and gave a satisfactory explanation. The 1<sup>st</sup> Respondent's employment could also be terminated without the need for giving any notice or salary in lieu thereof in the case of continued ill health, which is wholly applicable in the instant case.

38. Despite no liability being affixed under the Act upon the Petitioner, the Petitioner acceded to the requests of the 1<sup>st</sup> Respondent on two occasions and offered employment solely on humanitarian grounds keeping in mind the welfare of the 1<sup>st</sup> Respondent, which the 2<sup>nd</sup> Respondent has totally failed to consider.

39. The Petitioner submits that the 2<sup>nd</sup> Respondent had failed to consider the fact that the 1<sup>st</sup> Respondent decided to avail medical treatment in USA on her own volition and that the Petitioner was not informed of the 1<sup>st</sup> Respondent's decision to avail medical treatment in USA until the last second. In any case, it is clearly seen even from the statements of the 1<sup>st</sup> Respondent and her family to the media immediately after the incident that the Petitioner bore no fault for the accident and no police complaint was even lodged against the Petitioner for negligence or any other offense. The Petitioner, therefore, submits that it cannot be forced to pay the medical bills of the 1<sup>st</sup> Respondent or the amount of Rs. 10,00,000/- awarded by the 2<sup>nd</sup> Respondent.
40. The 2<sup>nd</sup> Respondent directs the Petitioner to give/pay the 1<sup>st</sup> Respondent all the necessary facilities, benefits and emoluments right from 22.08.2013 till date, overlooking the fact that the 1<sup>st</sup> Respondent has admittedly received all such facilities, benefits and emoluments until May 2015, which indicates non-application of mind on the part of the 2<sup>nd</sup> Respondent.
41. The Petitioner submits that in the original Complaint, the 1<sup>st</sup> Respondent sought for all her alleged accruals and rights to be granted to her without specifically setting out any specific demands. Subsequently, the 1<sup>st</sup> Respondent filed a Rejoinder dated 28.08.2019 seeking for exorbitant amounts of almost Rs. 60 Lakhs which were not mentioned in her original Complaint. This clearly shows that the 1<sup>st</sup> Respondent improved upon her claims without carrying out any amendment of her original Complaint since she expected a windfall to be awarded in her favour by the 2<sup>nd</sup> Respondent.
42. The Petitioner submits that the impugned Order passed by the 2<sup>nd</sup> Respondent is perverse and contrary to all canons of natural justice. Hence, it is liable to be quashed.

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43. The Petitioner submits that viewed from any angle, the impugned Order passed by the 2<sup>nd</sup> Respondent is contrary to law, facts and probabilities of the case and it is liable to be set aside.

**GROUND FOR INTERIM PRAYER**

44. The Petitioner submits that the Petitioner has been asked to reinstate the 1<sup>st</sup> Respondent to the post of a Teacher although she is incapable for the said role and pay the 1<sup>st</sup> Respondent's bills for medical treatment availed in USA, which is outside the capacity of the Petitioner. The Petitioner further submits that the 2<sup>nd</sup> Respondent has passed the impugned Order after the expiry of more than a year from the date of filing of the Complaint.

45. The Petitioner submits that the 2<sup>nd</sup> Respondent has passed the impugned Order despite not having the jurisdiction to do so which violates the Fundamental Rights of the Petitioner as well as the principles of natural justice.

46. The Petitioner further submits that if the interim Order, as prayed for, is not passed, then the Petitioner will suffer irreparable injuries and great losses. However, if the same is granted, then the Respondents will not be put to any loss or hardship.

**PRAYER**

**WHEREFORE**, the Petitioner most humbly prays that this Hon'ble Court may be pleased to:

- a) Issue a writ of Certiorari or any other writ, order or direction quashing the impugned Order dated 12.06.2020 bearing Case No. 21/2020 (**Annexure A** herein), passed by the 2<sup>nd</sup> Respondent;

- b) Direct the Respondents to pay the costs of this petition; and
- c) Issue such other writs, directions, or orders, which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case.

**INTERIM PRAYER**

**WHEREFORE**, the Petitioner humbly prays that pending disposal of this Writ Petition, this Hon'ble Court may be pleased to pass an ex-parte ad-interim order, staying the operation of the impugned Order dated 12.06.2020 in Case No. 21/2019-20 (**Annexure A** herein), passed by the 2<sup>nd</sup> Respondent, by dispensing with the issuance of notice to the Respondents, in the interest of justice and equity.

Bangalore

Date: 0 .08.2020

Advocate for Petitioner

**(B.K. Sampath Kumar)**

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