

Court No. - 17

Case :- WRIT - A No. - 2377 of 2024

Petitioner :- Surya Prakash Mishra

Respondent :- State Of U.P. Thru. Addl. Chief Secy. /Prin. Secy. Deptt. Higher Education Lko. And 4 Others

Counsel for Petitioner :- Alka Verma, Jhanak Bhawnani, Tanay Hazari

Counsel for Respondent :- C.S.C.

Hon'ble Manish Mathur, J.

1. Heard Mr. Tanay Hazari, learned counsel for petitioner, learned State Counsel for opposite party no. 1. In view of order being passed, notices to opposite parties no. 2 to 5 stands dispensed with.

2. Petition has been filed challenging order dated 14.12.2023 whereby petitioner was removed from service. Also under challenge is the order of termination dated 09.06.2023 alongwith a prayer for opposite parties to be directed to pay subsistence allowance and other increments due to be paid to petitioner.

3. Mr. Rishabh Tripathi, learned State Counsel has raised a preliminary objection regarding maintainability of this petition in view of the fact that the opposite parties no. 2 to 5 which who are authority of the D.A.V. College and D.A.V. Public School are private organizations and since petitioner is seeking quashing of orders pertaining to his services, petition under Article 226 of the Constitution of India is not maintainable. He has placed reliance on judgment rendered by Hon'ble Supreme Court in the case on **St. Marys Education Society versus Rajendra Prasad Bhargava & others (2023) 4 SCC 498**.

4. Refuting submissions advanced, learned counsel for petitioner on the other hand submits that a writ petition would be maintainable even against a private organization wherein the nature of duties and functions obligated to be performed by such a private organization or public in nature. It is submitted that the aforesaid judgment of **St. Marys Education Society** (supra) would be inapplicable in the facts and circumstances of the case since the aforesaid citation pertained to a case of non-teaching staff whereas petitioner was employed as a teacher with the institution concerned. It is further submitted that petitioner being a teacher was imparting public function

pertaining to imparting education to children of the institution concerned and therefore his removal from service would come within the realm of public duty.

5. The aforesaid submissions so advanced by learned counsel for parties have already been dealt with by Hon'ble Supreme Court in the case of **St. Marys Education Society** (supra) in the following manner:-

"68. We may sum up our final conclusions as under:

(a) An application under Article 226 of the Constitution is maintainable against a person or a body discharging public duties or public functions. The public duty cast may be either statutory or otherwise and where it is otherwise, the body or the person must be shown to owe that duty or obligation to the public involving the public law element. Similarly, for ascertaining the discharge of public function, it must be established that the body or the person was seeking to achieve the same for the collective benefit of the public or a section of it and the authority to do so must be accepted by the public.

(b) Even if it be assumed that an educational institution is imparting public duty, the act complained of must have a direct nexus with the discharge of public duty. It is indisputably a public law action which confers a right upon the aggrieved to invoke the extraordinary writ jurisdiction under Article 226 for a prerogative writ. Individual wrongs or breach of mutual contracts without having any public element as its integral part cannot be rectified through a writ petition under Article

226. Wherever Courts have intervened in their exercise of jurisdiction under Article 226, either the service conditions were regulated by the statutory provisions or the employer had the status of "State" within the expansive definition under Article 12 or it was found that the action complained of has public law element.

(c) It must be consequently held that while a body may be discharging a public function or performing a public duty and thus its actions becoming amenable to judicial review by a Constitutional Court, its employees would not have the right to invoke the powers of the High Court conferred by Article 226 in respect of matter relating to service where they are not governed or controlled by the statutory provisions. An educational institution may perform myriad functions touching various facets of public life and in the societal sphere. While such of those functions as would fall within the domain of a "public function" or "public duty" be undisputedly open to challenge and scrutiny under Article 226 of the Constitution, the actions or decisions taken solely within the confines of an ordinary contract of service, having no statutory force or backing, cannot be recognised as being amenable to challenge under Article 226 of the Constitution. In the absence of the service conditions being controlled or governed by statutory provisions, the matter would remain in the realm of an ordinary contract of service.

(d) Even if it be perceived that imparting education by private unaided the school is a public duty within the expanded expression of the term, an employee of a non teaching staff engaged by the school for the purpose of

its administration or internal management is only an agency created by it. It is immaterial whether "A" or "B" is employed by school to discharge that duty. In any case, the terms of employment of contract between a school and non teaching staff cannot and should not be construed to be an inseparable part of the obligation to impart education. This is particularly in respect to the disciplinary proceedings that may be initiated against a particular employee. It is only where the removal of an employee of non teaching staff is regulated by some statutory provisions, its violation by the employer in contravention of law may be interfered by the court. But such interference will be on the ground of breach of law and not on the basis of interference in discharge of public duty.

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

6. Upon applicability of the aforesaid judgment in the present facts and circumstances of the case, it is although evident that the case of **St. Marys Education Society** (supra) pertained to non-teaching staff whereas petitioner was a teacher in the institution concerned, nonetheless the proposition of law regarding maintainability of petition against a private organization in the considered opinion of the this Court is the same. In the aforesaid judgment, Hon'ble Supreme Court has clearly held that employees of a private organization would not have the right to invoke power under Article 226 in respect of matter relating to service where they are not governed or controlled by statutory provisions. It has also been held that an education institution may be performing myriad functions touching upon various facets of public life but a contract of service being private in nature would not fall within the realm of public functions.

7. In the considered opinion of this Court, the aforesaid judgment is clearly applicable in the present facts and circumstances where petitioner is seeking to enforce the contract of service entered between him and the college concerned.

8. In view of aforesaid, the petition not being maintainable under Article 226 of the Constitution of India is hereby **dismissed**. Parties to bear their own cost.

Order Date :- 21.3.2024
Satish