

Court No. - 7

Case :- WRIT - C No. - 6575 of 2024

Petitioner :- Anant Singh Thru. His Next Friend Natural Guardian Father Shri Sarvesh Singh

Respondent :- Central Board Of Secondary Education, Shiksha Kendra-Ii, Delhi Thru. Its Chairman And 5 Others

Counsel for Petitioner :- Ravi Singh, Raghvendra Singh

Counsel for Respondent :- Devendra Mohan Shukla, C.S.C.

Hon'ble Alok Mathur, J.

1. Heard Sri Ravi Singh, learned counsel for petitioner as well as learned Standing Counsel for respondent Nos. 3 & 4 and Sri Devendra Mohan Shukla, learned counsel for respondent Nos. 1 & 2.

2. By means of present writ petition, the petitioner has challenged the order dated 15.07.2024 passed by Principal, Sacred heart Higher Secondary School, Khairabad Sitapur wherein it has been stated that on 09.04.2024 the petitioner was found copying in the Chemistry examination and proceedings were initiated against him and the request of father of the petitioner could not be accepted for the aforesaid reasons and grace marks cannot be granted to him nor can he be promoted to Class-XII.

3. At the very outset, learned counsel for respondents have raised a preliminary objection with regard to maintainability of the writ petition.

4. In this regard learned counsel for petitioner submits that the educational institutions are performing public functions and accordingly a writ can be maintainable against them.

5. He has relied upon the judgment of Hon'ble the Supreme Court in the case of **Army Welfare Education Society Vs. Sunil Kumar Sharma & Ors.** passed in Civil Appeal Nos 7260-7264 of 2024.

6. Learned counsel for respondents on the other hand have relied upon the judgment of Hon'ble the Supreme Court in the case of **St. Mary's Education Society and another Vs. Rajendra Prasad Bhargava and others reported in 2023(4) SCC 498**, wherein it was held that private unaided minority institutions might be touching the sphere of public function by

performing public duty, its employees have no right invoking jurisdiction of High Court under Article 226 of the Constitution of India in respect of the matters relating to service where they are not covered or controlled by the statutory provision.

7. When a pointed query has been made to learned counsel for petitioner as to whether is there any statutory prescription with regard to conduct of an inquiry against a student found using unfair-means during examination, learned counsel for petitioner could not indicate any such statutory prescription governing the said matter.

8. A further query was made by this Court considering the previous order of this Court dated 01.07.2024 passed in Writ C No. 5687 of 2024 with regard to bye laws made by the Central Board of Secondary Education in respect to Class-XI which finds mention in the aforesaid order. Even the said bye laws could not be placed before this Court or could not further be informatively stated that any such bye laws exists.

9. Discussing the maintainability of writ petition under Article 226 of Constitution of India, Hon'ble the Apex Court in the case of **St. Mary's Education Society (Supra)** has laid down guidelines as under:-

"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 nonteaching 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 nonteaching 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 nonteaching 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."

10. In light of the above facts as well as considering the

aforesaid judgment of Hon'ble Supreme Court as well as material placed before this Court in the present writ petition, the aspect of the matter pertaining to use of unfair-means by a student of Class-XI is not subject to any statutory prescription by any State authority and the School in its wisdom has conducted an inquiry and found the petitioner to have used a mobile phone during the said examination and accordingly proceeded against him as method of inquiry against a student found to be involved in unfair-means is not subjected to any enactment, rules or regulation in this regard and therefore no "public duty" is cast upon the institution in this regard and therefore no writ petition is maintainable under Article 226 of the Constitution of India.

11. This Court further finds that once there is a clear finding with regard to using of unfair-means by a student there is no reason to grant grace marks as it seems to have been sought by the father of the petitioner by moving a representation to the respondent No. 5 and accordingly in such a situation, this Court is very clear that no grace marks could have been granted to the petitioner.

12. In light of the above, this Court is of the considered view neither is the writ petition maintainable nor can the prayer sought by him be granted by this Court in the peculiar facts and circumstances of the case.

13. For the aforesaid reasons, the writ petition is bereft of merits and is accordingly **dismissed**.

(Alok Mathur, J.)

Order Date :- 1.8.2024/Ravi/