

Chief Justice's Court

Case :- SPECIAL APPEAL No. - 180 of 2024

Appellant :- Anant Singh

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

Counsel for Appellant :- Shri Ravi Singh, Advocate

Counsel for Respondent :- Shri Devendra Mohan Shukla for Respondents No.1 and 2; Shri Anil Kumar Singh Visen for Respondents No.3 and 4 and Shri Sudhir Kumar Singh for Respondent No.5.

Hon'ble Arun Bhansali,Chief Justice

Hon'ble Jaspreet Singh,J.

1. Shri Sudhir Kumar Singh, learned counsel has filed his Vakalatnama on behalf of the respondent No.5, which is taken on record.
2. This appeal is directed against the order dated 01.08.2024 passed in WRIT-C No.6575 of 2024 whereby the writ petition filed by the petitioner has been dismissed as not maintainable and that the prayer sought by the petitioner cannot be granted.
3. The writ petition was filed by the petitioner aggrieved by the order dated 15.07.2024 passed by the respondent No.5 School wherein it was indicated that the appellant was caught copying in the chemistry examination and proceedings were initiated against him and that the request of the father cannot be accepted and grace marks cannot be granted to him nor he can be promoted in Class-XII.
4. When the matter came up before the learned Single Judge, respondents raised objections about maintainability of the writ petition relying of judgment in **St. Mary's Education Society and another v. Rajendra Prasad Bhargav and others, (2023) 4 SCC 498.**
5. The learned Single Judge, after hearing the parties, came to the conclusion that the writ petition against the private educational institutions

in relation to Class-XI Examination was not maintainable. The Court further came to the conclusion that the appellant was caught using unfair means and, therefore, he was not entitled to grant of grace marks and dismissed the writ petition.

6. Learned counsel for the appellant made vehement submissions that even in terms of judgment in **St. Mary's Education Society** (supra), the writ petition was maintainable and that the respondents were not justified in coming to the conclusion that the appellant has used unfair means.

7. Various submissions have been made pertaining to the enquiry said to have been conducted by the respondents and that the allegations that he was using mobile phone during the examination was *ex-facie* incorrect as it is claimed that the mobile phone was deposited in the office of the Principal before the start of the examination and, therefore, the order impugned deserves to be set aside.

8. Submissions were also made that if the learned Single Judge had come to the conclusion that the petition was not maintainable, the finding on merits should not have been recorded.

9. With respect to the judgment in the case **St. Mary's Education Society** (supra), submissions were made that the public duty is cast on the school and that it is governed by the Regulations of Central Board of Secondary Education which regulations have been violated, and, therefore, the writ petition was maintainable.

10. Learned counsel for the respondents supported the order impugned. Besides responding to the allegations on merit of the petitioner getting caught using unfair means, submissions were made that the judgment in the

case **St. Mary's Education Society** (supra) is clear and specific and, therefore, the appeal deserves dismissal.

11. We have considered the submissions made by learned counsel for the parties and have perused the material available on record.

12. The facts are not in dispute wherein the order impugned was passed by a private educational institution pertaining to the examination for Class-XI wherein on account of the fact that the appellant as per the version of the respondent-School was using unfair means in the examination, he was not eligible for grant of grace marks.

13. The Hon'ble Supreme Court in the case of **St. Mary's Education Society** (supra) inter alia laid down the following parameters pertaining to the maintainability of petitions against the private educational institutions:-

"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 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 with 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."

14. The submissions made by the learned counsel for the appellant that a public duty is cast on the school while discharging its function pertaining to education and, therefore, the petition is maintainable, cannot be accepted inasmuch as the Hon'ble Supreme Court in Para-68(b) clearly observed that even if it is assumed that in educational institution is imparting public duty, it is the act complaint of which decides the maintainability of the petition wherein there has to be a direct nexus with the discharge of public duty and

that 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 of the Constitution of India.

15. In the present case, while Class-X and Class-XII examinations are being held through Central Board of Secondary Education, Class-XI exam is a private exam only and as the allegations pertain to the claim made by the petitioner for grant of grace marks only, it cannot be said that there is any direct nexus with the discharge of public duty for the said subject matter and, therefore, in terms of law laid down by Hon'ble Supreme Court, the writ petition qua the private educational institution is not maintainable and the judgment of the learned Single Judge on the said aspect cannot be faulted.

16. However, once the Court had come to the conclusion that the writ petition was not maintainable, normally thereafter it should not have dealt with the merits of the dispute and should not have recorded finding on the said aspect.

17. In that view of the matter, the appeal filed by the appellant is **disposed of** with the observations that the writ petition was rightly held as not maintainable. However, the observations on merit made by the learned Single Judge would not come in the way of the appellant in case appellant chooses to question the validity of action of respondents by way of some other appropriate proceedings.

Order Date :- 21.08.2024
Rakesh/-

(Jaspreet Singh, J.) (Arun Bhansali, CJ.)