

Court No. - 38

Case :- WRIT - A No. - 68306 of 2009

Petitioner :- Mrs. Neelam Bhargava And Another

Respondent :- Union Of India And Others

Counsel for Petitioner :- Hemant Kumar, Harish Chandra Saxena, Shrish Chandra

Counsel for Respondent :- A.S.G.I., Awadhesh Rai, Rajesh Tripathi, S.C.

Hon'ble Donadi Ramesh, J.

1. Heard Sri Hemant Kumar, learned counsel for the petitioners and Sri Anand Tiwari, learned counsel for respondent no.3.

2. Learned counsel for respondent nos. 2 to 4 has raised objection with regard to maintainability of the writ petition. He has also submitted that identical issue has been considered by the Apex Court in **Civil Appeal No. 10899 of 2013 (Dileep Kumar Pandey vs. Union of India & Ors)**, which read as below:

"1. The issue involved in these two appeals is whether the Air Force School, Bamrauli, in District Allahabad, is a 'state or authority' within the meaning of [Article 12](#) of the Constitution of India.

2. Air Force Schools were established in the year 1966 for imparting education to the children of the personnel of the Indian Air Force (IAF). Indian Air Force Educational and Cultural Society (for short, 'the Society') was registered under the [Societies Registration Act, 1860](#). It was registered on 10th November 1987. It was established to manage Air Force Schools. The Air Force Schools at Bamrauli (for short, 'the said school') applied for affiliation with the Central Board of Secondary Education (CBSE) in 1985.

FACTS IN CIVIL APPEAL NO.10899 OF 2013

3. According to the case of the appellant (Dileep Kumar Pandey) in Civil Appeal No.10899 of 2013, pursuant to a public advertisement and selection process conducted by the officers of the IAF, on 1st July 2005, he was appointed as a trained graduate teacher in the subject of physical education in the said school. According to his case, he was appointed on probation, and the probation period was extended from time to time. On 28 th June 2007, an order was served upon the appellant stating that he was rendered surplus as the said school decided to appoint a more

qualified teacher. An option was given to the appellant either to remain employed in the said school on contractual basis on a fixed salary from 1st July 2007 to May 2008 or to remain employed under the existing arrangement under which his service would come to an end on 3rd July 2007. Therefore, the appellant filed a writ petition before the Single Judge of the High Court, inter alia, praying for a declaration that the appellant is a confirmed teacher in the said school. The writ petition was allowed by order dated 13th January 2010 by a learned Single Judge by holding that the said school was a 'State' within the meaning of [Article 12](#) of the Constitution of India and was amenable to the jurisdiction of the High Court. The learned Single Judge, after setting aside the impugned orders, observed that it will be open to the Society to consider the claim of the appellant for confirmation in accordance with the law. An appeal was preferred before the Division Bench essentially on behalf of the management of the said school, which was allowed by the impugned judgment dated 12th July 2010. The Division Bench held that the said school was not a state within the meaning of [Article 12](#), and as a result, a writ petition under [Article 226](#) could not be entertained. Hence, the judgment of the learned Single Judge was set aside.

FACTS IN CIVIL APPEAL NO.11378 OF 2013

4. The appellant Sanjay Kumar Sharma was appointed as a post-graduate teacher (Commerce) on 19th June 1993 and was later on confirmed by the Officer-in-Charge of the said school. The Officer-in-Charge was an officer of the IAF. On 3rd March 2003, he was appointed as the officiating Principal of the said school by Wing Commander Ajay Kumar, Officer-in-Charge. According to the case of the appellant, the 6th respondent, Smt. Shalini Kaul has started acting as the principal without taking over charge of the post. Disciplinary proceedings were initiated against him by the 6th respondent. Later on, at the instigation of the 6th respondent, girl students filed a complaint against the appellant. On the basis of various allegations, a show cause notice dated 19th December 2005 was issued to the appellant. On 23rd February 2006, a charge sheet was filed against the appellant. There were two writ petitions filed by the appellant. First was the writ petition No.12437 of 2006, wherein the appellant sought to challenge the appointment of the 6th respondent as the principal. Writ petition No.19915 of 2006 was filed by the appellant for challenging the charge sheet dated 23rd February 2006. By the order dated 5th July 2006, though the learned Single Judge held that petitions were maintainable, it was observed that as disciplinary proceedings were pending against the appellant, no interference should be made.

5. There were two special appeals preferred by the appellant for challenging the judgment dated 5th July 2006 of the learned Single Judge. By order dated 11th September 2006, the order of remand was passed by the Division Bench of the High Court to the Single Judge. Learned Single Judge by his order dated 16th September 2010 dismissed the writ petitions by relying upon the judgment impugned in Civil Appeal No.10899 of 2013. Thereafter, the appellant was terminated from service. A special Appeal was preferred by the appellant against the judgment and order dated 16th September 2010 in Writ Petition No.19915 of 2006. By the impugned judgment and order dated 2nd November 2010, the Division Bench dismissed the appeal on the ground that the writ petition was not maintainable.

SUBMISSIONS OF THE APPELLANTS

6. The learned senior counsel appearing for the appellants submitted that the primary function of the Air Force schools is the promotion of education, fine arts and culture, mainly amongst the past and present employees of the IAF, their families and children. The learned senior counsel submitted that the documents on record clearly show that the Air Force headquarters exercises dominant control over the administration and functioning of the Air Force schools. Learned senior counsel relied upon an application made by the said school to CBSE for affiliation, in which the said school claimed that it was fully financed by the IAF. He submitted that all Air Force school buildings have been constructed using Public Funds under the authorisation of the Ministry of Defence. He submitted that the pay scales of the school staff are fixed by the Air Force headquarters, which is the appropriate authority. The Command Schools Management Committee has to conform to the pay scales as issued/recommended by the Directorate of Education, Air Force Headquarters. He also pointed out that the Command Schools Management Committee has been constituted to run Air Force Schools in accordance with the rules and regulations specified in the Education Code of Air Force Schools of 2005 (for short, "the Education Code").

7. Inviting our attention to the findings recorded by the Division Bench of the High Court, he submitted that the High Court had committed an error in holding that there was no material on record to show that the said school had been set up by using government funds and that it was not established that the institution is not governed by any statutory regulations. He submitted that there is enough material on record to show that the IAF exercises deep and pervasive control over the said school and, in fact, over all Air Force Schools. He submitted that the IAF provides financial assistance to Air Force Schools. He also pointed out that the Society is funded through regimental funds and has received grant-in-aid. He pointed out that Regimental Funds belong to the IAF.

8. Learned senior counsel has relied upon the following decisions of this Court: -

(I) *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust & Ors. v. V.R. Rudani & Ors.*, 1989 (2) SCC 691,

(ii) *Pradeep Kumar Biswas v. Indian Institute of Chemical Biology & Ors.*, 2002 (5) SCC 111,

(iii) *Raj Soni v. Air Officer Incharge Administration & Anr.*, 1990 (3) SCC 261,

(iv) [\(iv\) All India Sainik Schools Employees' Association v. Defence Minister-cum-Chairman Board of Governors, Sainik Schools Society, New Delhi & Ors.](#), 1989 Supp (1) SCC 205, and

(v) [Ajay Hasia & Ors. v. Khalid Mujib Sehravardi & Ors.](#), 1981 (1) SCC 722.

9. Learned senior counsel submitted that IAF has functional and administrative control over the said Society and the said school. Therefore, he submitted that Air Force Schools are "authority" within the

meaning of [Article 12](#) of the Constitution of India and thus, are amenable to writ jurisdiction under [Article 226](#) of the Constitution of India.

SUBMISSIONS OF ADDITIONAL SOLICITOR GENERAL OF INDIA

10. Learned ASG pointed out that the IAF was established in the year 1932. Subsequently, Regimental Schools were established. The Ministry of Defence allocated funds for establishing schools for Air Force Officers. However, ownership and tenancy of buildings for schools, as well as issues related to the land, remained with the local military administration. She submitted that the Regulations for the Air Force (hereinafter referred to as "the Regulations") define "Non- Public Funds," which are also known as "Regimental Funds." Learned ASG pointed out that the Regulations explain the meaning of "Non-Public Funds Accounts". She submitted that Air Force Schools are governed by Non-Public Funds of the Forces. She submitted that the schools have sources of income that come from Tuition fees, Interest, Activity fees, Admission fees, Development fees, Computer fees, and miscellaneous fees. Learned ASG relied upon the decision of this Court in the case of [Union of India & Anr. v. Chotelal & Ors.](#), 1999 (1) SCC 554 She submitted that [the said decision](#) is squarely applicable to the facts of the case. Learned ASG also relied upon a decision of this Court in R.R. Pillai (Dead) through LRs. v. Commanding Officer, Headquarters Southern Air Command (U) and Ors., 2009 (13) SCC 311.

11. Learned ASG submitted that the entire issue is covered against the appellants by the decision of this Court in the case of [Army Welfare Education Society, New Delhi v. Sunil Kumar Sharma & Ors.](#), 2024 SCC Online SC 1683. etc. She submitted that this decision relied upon the earlier decision of this Court in the case of St.Mary's [Education Society & Anr. v. Rajendra Prasad Bhargava & Ors.](#), 2023 (4) SCC 498.

12. By way of rejoinder, learned counsel appearing for the appellants submitted that the cases of Army Welfare Education Society⁸ and St.Mary's Education Society & Ors. stand on a different footing. He tried to distinguish the decisions in the cases of Army Welfare Education Society and St.Mary's Education Society & Ors. and submitted that the said decisions will not apply.

CONSIDERATION OF SUBMISSIONS

13. By the impugned judgments, the Division Bench of the Allahabad High Court held that the Society is not a 'state' within the meaning of [Article 12](#) of the Constitution. We must refer to the assertions made by the appellant in the writ petition filed before the Single Judge of the High Court on this aspect. In the writ petition that is the subject matter of Civil Appeal No. 10899 of 2013, in paragraphs 5 to 7, the appellant has stated thus:

"5. That for the effective management and administration of the Air Force School at various units, the Society has framed an Education Code Air Force Schools 2005. The Code aforesaid is identical to Education Code framed for the managing to Kendriya Vidyalay.

6. That the Air Force Schools are financed by the Central Government, through Indian Air Force School, controlled by the officers of the Indian Air Force and the purposes is to impart education to the children of

officers and employees of the Indian Air Force. The Air Force Schools come within the meaning of the word "State" under [Article 12](#) of the Constitution of India.

7. That the Air Force School, Bamrauli, Allahabad, is a school established by the aforesaid Society and the said school comes under the definition of "State" under [Article 12](#) of the Constitution of India."

14. In the counter filed before the High Court, the respondents contended that the Society is a non-profit making welfare association and the said school is a non- public fund school. The finance is arranged from the fees collected from students under various heads, and the air force personnel make a contribution through their welfare fund. It is specifically pleaded that neither in the welfare fund nor in the school finances is any money of the Central Government involved. Moreover, there is no control by the Central Government or the Ministry of Defence over the running or management of the school. While addressing the contents of paragraph 5 of the petition, it is specifically pleaded that the Education Code issued by the Society is not identical to the Education Code issued by the CBSE or Kendriya Vidyalaya. It is reiterated, while dealing with paragraph 6 of the writ petition, that the said school does not receive any grant from any agency having a link to any of the governments.

15. Now, we will refer to the law laid down on this aspect. Paragraphs 15 and 20 of the decision of this Court in the case of *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust* (supra) read thus:

"15. If the rights are purely of a private character no mandamus can issue. If the management of the college is purely a private body with no public duty mandamus will not lie. These are two exceptions to mandamus. But once these are absent and when the party has no other equally convenient remedy, mandamus cannot be denied. It has to be appreciated that the appellants trust was managing the affiliated college to which public money is paid as government aid. Public money paid as government aid plays a major role in the control, maintenance and working of educational institutions. The aided institutions like government institutions discharge public function by way of imparting education to students. They are subject to the rules and regulations of the affiliating University. Their activities are closely supervised by the University authorities. Employment in such institutions, therefore, is not devoid of any public character. [See *The Evolving Indian Administrative Law* by M.P. Jain (1983), p. 226] So are the service conditions of the academic staff. When the University takes a decision regarding their pay scales, it will be binding on the management. The service conditions of the academic staff are, therefore, not purely of a private character. It has super-added protection by University decisions creating a legal right-duty relationship between the staff and the management. When there is existence of this relationship, mandamus cannot be refused to the aggrieved party.

.. . . .

20. The term "authority" used in [Article 226](#), in the context, must receive a liberal meaning unlike the term in [Article 12](#). [Article 12](#) is relevant only for the purpose of enforcement of fundamental rights under [Article 32](#). [Article 226](#) confers power on the High Courts to issue writs for

enforcement of the fundamental rights as well as non-fundamental rights. The words "any person or authority" used in [Article 226](#) are, therefore, not to be confined only to statutory authorities and instrumentalities of the State.

They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed, if a positive obligation exists mandamus cannot be denied.

(emphasis added)

16. In the case of Pradeep Kumar Biswas (supra), this Court dealt with the aspect of control over the institution. This Court relied upon the decision in the case of Ajay Hasia (supra). In paragraph 40, this Court held thus:

"40. The picture that ultimately emerges is that the tests formulated in [Ajay Hasia \[Ajay Hasia v. Khalid Mujib Sehravardi, \(1981\) 1 SCC 722 : 1981 SCC \(L&S\) 258\]](#) are not a rigid set of principles so that if a body falls within any one of them it must, *ex hypothesi*, be considered to be a State within the meaning of Article

12. The question in each case would be — whether in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under the control of the Government. Such control must be particular to the body in question and must be pervasive. If this is found then the body is a State within [Article 12](#). On the other hand, when the control is merely regulatory whether under statute or otherwise, it would not serve to make the body a State." (emphasis added)

17. In the case of All India Sainik Schools Employees Association (supra), as a matter of fact, it was found that the entire funding for running the school was provided by the State and Central Governments. Even the overall control was found vested in governmental authority.

18. In the case of Raj Soni (supra), this Court, as can be seen from paragraph 10, found that it was not necessary to decide whether or not the school is a 'state' or 'authority' under [Article 12](#) of the Constitution of India.

19. Now, we turn to the decision of this Court in the case of St.Mary's Education Society (supra). It is true that this Court did not consider the decision of this Court in the case of Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust (supra) of this Court. However, this Court has discussed all relevant principles. The principles [laid down in the said decision](#) in the case of St.Mary's Education Society & Ors. are in paragraphs 75.1 to 75.5, which read thus:

"75.1. 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.

75.2. 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.

75.3. 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.

75.4. 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.

75.5. 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."

(emphasis added)

20. The law [laid down in](#) this decision was followed by this Court in the case of Army Welfare Education Society (supra). In that case, this Court dealt with a school taken over by the Army Welfare Education Society, which required existing teachers to requalify under new conditions. The High Court held that the school could not impose service conditions to the teachers' disadvantage. In [the said decision](#), this Court was concerned with a case where a school was taken over by the petitioner - the Army Welfare Education Society. A letter was sent to the teachers in the school run by St. Gabriel's Academy indicating that those among the teachers who are eligible in terms of CBSE guidelines would be considered for appointment on ad hoc basis for one year and thereafter, they will have to appear and qualify written test conducted by the Army Welfare Education Society. The teachers approached the High Court. Learned Single Judge held that the school cannot impose the service conditions on the teaching staff to their disadvantage. The issue before this Court in the said case was whether the Army Welfare Education Society was a "state" or "authority" within the meaning of [Article 12](#) of the Constitution. This Court found that the Society was a purely unaided private Society established for the purpose of imparting education to the children of the army personnel. This Court applied the law [laid down in](#) the case of St. Mary's Education Society & Ors. (supra) and held that though the Society was imparting education, which involves public duty, the relationship between the respondents and the Army Welfare Education Society was that of an employee and private employer arising out of a private contract. Therefore, a breach of contract does not touch any public law element, and the school cannot be said to be discharging any public duty in connection with the employment of the teachers.

21. We have perused the application made to CBSE for affiliation. The application was made on 22nd August 1985. It was in the name of the Air Force Primary School. Although it is stated that the school was fully financed by the IAF, there is no evidence to show that the school was actually financed by the IAF. The Education Code, which applies to Air Force Schools, is not a statutory code that has the force of law. It is issued under the authority of the Chairman of the Board of Governors of the IAF Educational and Cultural Society. It provides that all Air Force Schools are administered under the Society. As per the Memorandum of Association of the Society, the members of the Society are IAF officers who hold their posts ex-officio. The Command Schools Managing Committees do not have control over the day-to-day running of Air Force Schools. The day-to-day control is with the School Managing Committee. Even if the school building is constructed out of Public funds, there is no record to show that it receives a grant from Public Funds. There is nothing in the Education Code to show that the IAF has control over the said school. The audited accounts of the school for the period from 2019-20 to 2023-24 indicate that no public funds or grants were received by the school. Even if pay scales applicable to all IAF schools are determined by the IAF, that by itself will not amount to pervasive control by the IAF over the functioning of the schools.

22. It is not shown how the IAF headquarters has any control over the management of the said school. Although some funds may have originated from the Army Welfare Society, it cannot be said that the State or the IAF has any control, let alone all-pervasive control, over the school. Moreover,

the said Society is not governed by any statutory rules.

23. In the impugned judgment, the Division Bench recorded the undisputed position that the appellants are employees of the said school, which is not governed by any statutory regulations. The Education Code, which applies to the said school, does not have any statutory sanction or force. A finding of fact was recorded that there is no material to show that the Government or the IAF has any control over the management of the school. It is not possible for us to take a contrary view.

24. In the circumstances, we are unable to find any fault with the view taken by the Division Bench of the High Court. The relationship between the appellants and the said school is in the realm of private contract. Assuming that there was a breach of private contract, the same does not involve any public law element.

25. Therefore, there is no merit in the appeals, and the same are dismissed. We, however, make it clear that other remedies, if any, of the appellants are kept open."

3. In view of the abovesaid observations made by the Apex Court, as the writ petitions are not maintainable against the institutions run by the respondents.

4. Learned counsel for the petitioner has submitted that a review petition has been filed by some intervenors, Shikshak Kalyan Samiti, which is pending before the Apex Court.

5. Considering the submissions made and also the findings of the Apex Court, the writ petition is dismissed with liberty to the petitioners to file recall of this order after placing order, if any, passed in review petition filed by the intervenors.

Order Date :- 19.8.2025

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(Donadi Ramesh, J.)