

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition No. 4133 of 2004**

Smt. Makhmoor Jahan W/o Abdul Nayeem, Aged about 47 years, Upper Division Teacher, Subhania Anjuman Islamia Girls Higher Secondary School, Bilaspur, R/o Behind Samudaik Bhawan, MIG 1-16 Nehru Nagar, Bilaspur (C.G.)

---- Petitioner

Versus

1. Secretary, Subhania Anjuman Islamia Bilaspur (C.G.)
2. Government of Chhattisgarh Through Secretary, School Education Department, D.K. Bhawan, Raipur (C.G.)
3. Director, Lok Sikshan Chhattisgarh, Raipur (C.G.)
4. District Education Officer, Bilaspur (C.G.)

---- Respondents

Writ Petition (S) No. 1929 of 2008

Smt. Makhmoor Jahan W/o Abdul Nayeem, Aged about 51 years, R/o Behind Samudaik Bhawan, MIG 1-16 Nehru Nagar, Bilaspur (C.G.)

---- Petitioner

Versus

1. Secretary, Subhania Anjuman Islamia Bilaspur (C.G.)
2. Government of Chhattisgarh Through Secretary, School Education Department, D.K. Bhawan, Raipur, Raipur (C.G.)
3. Director, Lok Sikshan Chhattisgarh, Raipur (C.G.)
4. District Education Officer, Bilaspur (C.G.)

---- Respondents

For Petitioner	:	Ms. Deepali Pandey, Advocate.
For Respondent No.1	:	Shri Ashish Shrivastava, Advocate.
For Respondents 2 to 4.	:	Shri B. Gopa Kumar, Deputy Advocate General.

HON'BLE THE CHIEF JUSTICE**Order On Board**

10/07/2015

1. The Petitioner in the two applications is common. In W.P. No.4133 of 2004 the relief sought was for a direction to Respondent No.1 to obtain approval of her appointment and pay arrears of salary due since 18.9.1991 and also continue to pay regular salary thereafter. In W.P.(S) No.1929 of 2008 the challenge is to the subsequent order of dismissal dated 21.3.2008.

2. Learned Counsel for the Petitioner submits that the Petitioner was appointed on 4.9.1991 and was paid Rs.500/- per month for initial three years only in the name of being an ad-hoc appointee. Thereafter no salary has been paid on the ground that approval of her appointment has been sought, even though the Petitioner continues to discharge duties. Peeved with her for having filed the writ petition for arrears of salary, Respondent No. 1 has terminated her services during the pendency of the writ petition. The authorities in an enquiry dated 12.7.2010, obtained by the Petitioner under the Right to Information Act on 28.9.2011, have themselves opined that the termination after long years was not justified and the Petitioner should have been regularised after three years. The writ petition is maintainable and no objection has been raised by the Respondents. The Petitioner is at an advanced age, the pleadings are complete and if at this stage she will be relegated to a Civil Suit it shall be an onerous remedy not in the interest of justice.

3. Learned Counsel for the State submits that the Petitioner was directly appointed as ad-hoc Assistant Teacher in the Respondent School. This was contrary to Circular dated 22.1.1988 issued by the State of Madhya Pradesh bearing no. F-73-8-85-E-20 Bhopal that appointment as Assistant Teacher could be by way of promotion only from the post of Lower Division Teacher and she could not have been

appointed directly on the former post.

4. Learned Counsel for Respondent No.1 submits that the Petitioner was appointed purely in an ad-hoc capacity in view of the termination of the regular incumbent. The letter of appointment dated 4.9.1991 itself stated that it could be terminated at any time. All arrears of the Petitioner has been paid to her by cheque no. 738723 dated 20.3.2008 drawn on the Bank of Maharashtra. Her appointment was never approved by the District Education Officer.

5. The submissions on behalf of the parties having been considered it is not necessary to deal with them as the matter can be disposed off on another single issue leaving the Petitioner to pursue such appropriate remedy as it may be advised. The Respondent No.1 is a minority aided educational institution with the fundamental right to establish and administer under Articles 29 and 30 of the Constitution. It is not for the State authorities to decide if salary has been paid to the Petitioner in accordance with law or not or whether the termination was in accordance with law. It is the exclusive jurisdiction of Respondent no.1. The terms for appointment can only be prescribed by the State Government to maintain standards of education which is for all to comply. If the Respondent no.1 appointed the Petitioner and took work from her, and the Petitioner is aggrieved with such conduct of Respondent no.1, it is a private cause of action having no public law element in it. The writ petition is not maintainable against Respondent No.1 and no relief has been sought against the other Respondents.

6. In (1965) 1 SCR 890 (State of Assam v. Ajit Kumar Sarma) with regard to the issuance of a writ against a private college receiving grant-in-aid it was observed as follows :-

“14. Then we come to the question whether a writ

could have been issued against the Governing Body of the College. We find however that there is no appeal by the College against the order of the High Court issuing a writ against it. In these circumstances we do not think that we can interfere with the order of the High Court insofar as it is against the Governing Body of the College. At the same time we should like to make it clear that we should not be taken to have approved of the order of the High Court against the Governing Body of the College in circumstances like the present and that matter may have to be considered in a case where it properly arises.”

7. In (1997) 3 SCC 571 (K. Krishnamacharyulu v. Sri Venkateswara Hindu College of Engineering) it was observed that the writ remedy is available against a private aided institution only if a public element is involved in the grievance and not for a private remedy. This has been reiterated in (2006)12 SCC636 (M.Raja v. Ceeri Educational Society Pilani) as follows :-

“25. This Court clearly held that interference in the affairs of a private educational institution would be justified only if public law element is involved.”

In absence of any allegation for violation of any statutory rule by the Respondent No.1, the writ petition is held to be not maintainable. Sympathy cannot be a ground for grant of relief or even that pleadings are complete if jurisdiction under Article 226 is inherently wanting. Nothing in the present order shall be deemed or construed as any opinion and/or observation against the Petitioner in any appropriate civil proceeding that she may be advised to institute and which shall have to be decided on its own merits in accordance with law.

8. The writ petition is dismissed as not maintainable.

(Navin Sinha)
CHIEF JUSTICE