

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 1716 of 2007**

1. Sunil Chansoria son of late Shri R. R. Sharma, R/o Chhattisgarh Nagar, Tikrapara, Raipur (CG)

---- Petitioner**Versus**

1. The State of Chhattisgarh through the Secretary, Education, D.K.S. Bhawan, Mantralaya, Raipur (CG)
2. Secretary, the Board of Secondary Education and Teachers Training M.P.C.N.I, Raipur (CG)
3. Principal, Sent Paul's Higher Secondary School, Raipur (CG)

---- Respondents

For Petitioner	:	Shri Shailendra Shukla, Advocate
For Respondent No.1/State:	:	Shri O. P. Sahu, Govt. Advocate
For Respondents 2 & 3	:	Shri Sourabh Sharma, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****02/02/2017**

The present petition under Article 226 of the Constitution of India has been preferred by the petitioner seeking for a direction to the respondents to take the petitioner back into service on regular basis in the establishment of respondents 2 & 3 and to pay the compensation for not taking work without any reason since July, 2006 on wards. Further relief has been sought for restraining the respondents from removing the petitioner from service.

2. Case of the petitioner is that he was appointed by the respondent no.3 to work as an Assistant Teacher (on ad hoc) at Saint Paul's Higher Secondary School, Raipur in the year 1993 and since then he was continuously working till July 2006. Thereafter services of the petitioner

were discontinued by the respondents 2 & 3 without any reason. Therefore, the present petition was immediately filed seeking the relief as mentioned in the preceding paragraph.

3. Counsel for the petitioner submits that in the year 1993 when the petitioner was initially appointed, he was aged about 23 years and he continued to work with the respondents 2 & 3 till July, 2006 by which time he attained the age of 43 years and at that age there was no possibility of his getting a better employment. Therefore, the action on the part of the respondents 2 & 3 terminating services of the petitioner without any reason is bad in law and deserves to be interfered with a direction to the respondents 2 & 3 to take the petitioner back into service with consequential benefits. It is also the contention of the counsel for the petitioner that before termination of the services of the petitioner, the respondents had not issued any show cause notice or explanation neither have they assigned any reason for removal, discontinuation or termination of the services of the petitioner and therefore, the action on the part of the respondents 2 & 3 is bad in law. Thus, prayed for allowing of the present petition.

4. On the other hand, counsel for the respondents 2 & 3 submits that the present writ petition itself is not maintainable at the threshold for the simple reason that the relief which has been sought for is against respondents 2 & 3 which is a private unaided minority educational institution. Since it is a private institution not receiving any aid from the State Govt., the writ may not be issued by this Court under Article 226 of the Constitution of India against a private body. He submits that the Co-ordinate Bench of this Court in WP No. 523 of 1999 has decided a writ petition holding it to be not maintainable on the ground that the educational institution being a private body and not

receiving any aid from the Govt. would not fall within the ambit of State as defined under Article 12 of the Constitution of India.

5. He further submits that on the merits also the present petition is not maintainable for the reason that from the pleadings of the petition itself it is established that no formal order of appointment was issued in favour of the petitioner neither was there any order of termination issued in respect of discontinuation of his services. Further contention of the counsel for respondents 2 & 3 is that since the petitioner was engaged temporarily as an ad hoc teacher without following any formal recruitment process, no substantive right could be created in favour of the petitioner nor was the service of the petitioner engaged against any sanctioned vacant post so as to create a right in his favour.

6. Having heard the rival contentions put forth by the parties and on perusal of the order of the Co-ordinate Bench it is evident that in respect of the same society i.e. respondent no.2 the Co-ordinate Bench of this Court in WP No. 523/1999 and WP No. 1948/1996 decided on 28.09.2015 relying upon the decision of the Supreme Court in the case of K. Krishnamacharyulu and Others v. Sri Venkateswara Hindu College of Engineering and Another and also in the case of Mrs. Satimbla Sharma & Ors. V. St. Paul's Senior Secondary School & Ors. has held that a writ petition would not be maintainable against an unaided private educational institution.

7. In view of the authoritative decision by the Co-ordinate Bench of this Court in the aforesaid two writ petitions in respect of a school running by the same Society, this Court is of the opinion that the present writ petition also is thus not maintainable. Hence, the objection of the respondents 2 & 3 is upheld.

8. In view of the upholding of the preliminary objection of the petition not being maintainable, this Court refrains from entering into the merits of the case so far as the veracity of the action on the part of the respondents 2 & 3 discontinuing the services of the petitioner is concerned.

9. With aforesaid observation the present writ petition stands dismissed as not maintainable.

Sd/-
(P. Sam Koshy)
JUDGE