

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition No.2760 of 2003

Mrs. Mani Sharma, W/o Dr. Niraj Sharma, aged about 36 years, R/o 549, Street-3, Smriti Nagar, Bhilai, District Durg (C.G.)

---- Petitioner

Versus

1. Maharshi Shikshan Sansthan (Maharshi Vidya Mandir) An Education Society rgtd. Societies Registration Act, XXI of 1860, having its National Office at Maharshi Nagar, Noida-Dadri Road, Noida – 201 304 (U.P.)
 2. Board of Directors, Maharshi Shikshan Sansthan (Maharshi Vidya Mandir) An Education Society rgtd. Societies Registration Act, XXI of 1860, having its National Office at Maharshi Nagar, Noida-Dadri Road, Noida – 201 304 (U.P.)
 3. Director (Personal & Admn.), Maharshi Shikshan Sansthan (Maharshi Vidya Mandir) An Education Society rgtd. Societies Registration Act, XXI of 1860, having its National Office at Maharshi Nagar, Noida-Dadri Road, Noida – 201 304 (U.P.)
 4. Regional Director, Maharshi Vidya Mandir, Regional Office, Bharat Colony, Opposite LIC Building, Madan Mahal, Jabalpur (M.P.)
- Respondents

For Petitioner:	Mr. Ashish Shrivastava and Mr. Animesh Verma, Advocates.
For Respondents:	Mr. Raghavendra Verma, Advocate on behalf of Mrs. Hamida Siddiqui, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

07/11/2017

1. This writ petition is directed invoking the jurisdiction of this Court under Article 226 of the Constitution of India calling in question the order dated 18-8-2003 by which the petitioner's services have been terminated by the Director (Personnel & Administration), Maharishi Vidya Mandir, an educational institution / society registered under the provisions of the Societies Registration Act, 1860 (for short, 'the Act of

1860').

2. Mr. Raghavendra Verma, learned counsel appearing for the respondents, would take a preliminary objection that the writ petition has been filed against a private unaided educational institution, a society registered under the Act of 1860, that too it is a matter concerning employer-employee or master-servant relationship between the petitioner and the said unaided private educational institution, therefore, the petition would not be maintainable.
3. Replying the preliminary objection, Mr. Ashish Shrivastava, learned counsel appearing for the petitioner, would submit that the writ petition would be maintainable and relied upon a decision of the Supreme Court in the matter of **Ramesh Ahluwalia v. State of Punjab and others**¹.
4. The question for consideration would be, whether a writ or direction under Article 226 of the Constitution of India can be issued against such a private society in a matter relating to employer-employee or master-servant relationship between the petitioner and the respondent unaided private educational institution.
5. The Supreme Court in the matter of **K. Krishnamacharyulu and others v. Sri Venkateswara Hindu College of Engineering and another**² has held that a writ petition is maintainable against a non-aided private educational institution when public law element is involved and the claim is based on the Government instructions.
6. Similarly, the Supreme Court in the matter of **Sushmita Basu and others v. Ballygunge Siksha Samity and others**³ relying upon the

1 (2012) 12 SCC 331

2 (1997) 3 SCC 571

3 (2006) 7 SCC 680

decision in **K. Krishnamacharyulu** (supra) held as under: -

“4. In this context, we must also notice that the writ petition in the High Court is filed for the issue of a writ of mandamus directing a private educational institution to implement the recommendations of the Third Pay Commission including their implementation with retrospective effect. Even the decision relied on by learned counsel for the appellants, namely, *K. Krishnamacharyulu v. Sri Venkateswara Hindu College of Engg.*, (1997) 3 SCC 571, shows that interference under [Article 226](#) of the Constitution of India to issue a writ of mandamus by the Court against a private educational institution like the first respondent herein, would be justified only if a public law element is involved and if it is only a private law remedy no writ petition would lie. We think that even going by the ratio of that decision, a writ of mandamus could not have been issued to the first respondent in this case.”

7. Similarly, the Supreme Court in the matter of **Satimbla Sharma and others v. St Paul's Senior Secondary School and others**⁴, referring to the decisions rendered in **K. Krishnamacharyulu** (supra) and **Sushmita Basu** (supra) held that when the dispute brought before the writ court against a private unaided educational institution does not fall within the domain of public law, but it involves employer and employee relation between the parties, a writ would not lie. It has been held in paras 23, 24 and 25 as under: -

“23. We also do not think that the Court could issue a mandamus to a private unaided school to pay the salary and allowances equal to the salary and allowances payable to teachers of government schools or government-aided schools. This is because the salary and allowances of teachers of a private unaided school is a matter of contract between the school and the teacher and is not within the domain of public law.

24. [In *Sushmita Basu v. Ballygunge Siksha Samity*](#), (2006) 7 SCC 680, the teachers of a recognised private school known as Ballygunge Siksha Sadan in Calcutta filed a writ petition in the High Court of Calcutta praying for issuance of writ of mandamus directing the authorities of the school to fix the salary of teaching and non-teaching staff of the school and to remove all the anomalies in the scales of pay as recommended by the Third Pay

4 (2011) 13 SCC 760

Commission as extended to other government-aided schools and government schools and this Court held that in the absence of statutory provision no such direction can be issued by the High Court under [Article 226](#) of the Constitution.

25. Where a statutory provision casts a duty on a private unaided school to pay the same salary and allowances to its teachers as are being paid to teachers of government-aided schools, then a writ of mandamus to the school could be issued to enforce such statutory duty. But in the present case, there was no statutory provision requiring a private unaided school to pay to its teachers the same salary and allowances as were payable to teachers of government schools and therefore a mandamus could not be issued to pay to the teachers of private recognised unaided schools the same salary and allowances as were payable to teachers of government institutions.”

8. A coordinate Bench of this Court in **Mukul Ranjan Ganguly v. Board of Secondary Education and Teachers Training and others**⁵

relying upon the aforesaid three decisions of the Supreme Court has held that when the grievance is personal in nature, the other authority not being a State, a writ or direction would not lie against the respondents and observed in para 3 as under: -

“3. The law is well settled in 'n' number of decisions that a writ would lie against any other 'authority' even if it is not a state within the meaning of Article 12 of the Constitution of India, if the said authority discharges public functions and there involved public law element in the dispute brought before the Court, however, when the grievance is personal in nature, the other authority not being a state, a writ or direction would not lie against the respondents.”

9. In **Ramesh Ahluwalia** (supra), the decision cited and relied upon by

Mr. Shrivastava, the Supreme Court has held as under in para 14: -

“14. In view of the law laid down in the aforementioned judgments of this Court, the judgment of the learned Single Judge⁶ as also the Division Bench⁷ of the High

⁵ W.P.No.523/1999, decided on 28-9-2015

⁶ Ramesh Ahluwalia v. State of Punjab, WP (C) No. 11691 of 2009, decided on 5-8-2009 (P&H)

⁷ Ramesh Ahluwalia v. State of Punjab, LPA No. 368 of 2010, order dated 25-10-2010 (P&H)

Court cannot be sustained on the proposition that the writ petition would not be maintainable merely because the respondent institution is a purely unaided private educational institution. The appellant had specifically taken the plea that the respondents perform public functions i.e. providing education to children in their institutions throughout India.”

10. The aforesaid decision is clearly distinguishable to the present case, as in the instant case, the dispute involves termination of the petitioner and thus, it involves employer-employee relationship in which no public element is involved and therefore it is covered by the decisions rendered by the Supreme Court in **K. Krishnamacharyulu** (supra) and **Sushmita Basu** (supra), as such **Ramesh Ahluwalia** (supra) is clearly distinguishable.
11. Likewise, the recent decision of the Supreme Court in the matter of **Dr. Janet Jeyapaul v. SRM University and others**⁸ is also distinguishable to the facts of present case.
12. As a fallout and consequence of aforesaid discussion, the preliminary objection is upheld and the instant writ petition against a private unaided educational institution which relates to dispute of termination of the petitioner i.e. employer-employee relationship and which does not involve public element, is held to be not maintainable following the principle of law laid down in the aforesaid judgments of the Supreme Court and coordinate Bench decision of this Court and accordingly, the writ petition is dismissed. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

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