

09.12.2021
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Sl. No. 02
Ct. No. 05

WPA 4626 of 2018

[Via Video Conference]

Mainak Mohan Das
-Versus-
The State of West Bengal & Ors.

Mr. Biswaroop Bhattacharya
Mr. Anindya Bose
Mr. Distendu Mandal
Ms. Mayuri Ghosh
Mr. Nikhil Gupta

.... for the petitioner

Mr. Jaharla De
Mr. Shamim Ul Bari

.... for the State

Mr. Sanjib Kumar Mal
Mr. Mr. Atanu Roychoudhuri
Mr. Pushan Majumdar

.... for the respondent Nos. 8 to 11

Mr. Debu Chowdhury

.... for the AICTE

The petitioner has prayed for cancellation of a letter dated 13th February, 2018 of College of Engineering and Management, Kolaghat by which the petitioner was released from his service with effect from 15th February, 2018 and was directed to be paid three months and fifteen days' salary for the service rendered to the College.

Learned counsel appearing for the respondent Nos. 7 to 11 being the Registrar, Chairman, Director

and other Officials of the Maulana Abul Kalam Azad University of Technology and the College have raised a point of maintainability and have addressed the Court on that point.

The decision is hence being given on the issue of maintainability and the Court will go into the merits of the writ petition subject to the question of maintainability being decided in favour of the petitioner.

The factual context, as disclosed in the pleadings is first being dealt with.

According to learned counsel arguing against maintainability of the writ petition, the College of Engineering and Management, Kolaghat is a private College and is not amenable to the writ jurisdiction of this Court. Counsel places several documents in this regard.

The aforesaid position is disputed by learned counsel appearing for the petitioner who also relies on a few documents to show that the College has received grants from the State Government, which would qualify it as a Government aided institution. Counsel lays emphasis on the public functions performed by the College.

The documents disclosed in the affidavit-in-opposition of the concerned College include a list of “Private Self Financing Institutions” published by the

West Bengal Joint Entrance Examinations Board which include the College of Engineering and Management, Kolaghat in entry No. 25. The second document of 5th June, 2018 is of the Assistant Secretary, Department of Higher Education, Science and Technology and Bio Technology of the Government of West Bengal which states that the Department of Higher Education confirms that the College is a “Private Engineering College”. The third document issued by the Higher Education Department of the State further confirms that the Department of Higher Education, Science and Technology and Bio Technology “*does not provide any recurring grant to the College of Engineering and Management, Kolaghat.*”

As opposed to the above documents, the petitioner has disclosed a few documents in the supplementary affidavit filed by the petitioner which reflect that the College has received grant for Technical Education Quality Improvement Programme of the Government of India (TEQIP) from 2018 onwards. Documents of 28th June, 2021 have also been placed showing that the Additional Chief Secretary of the Power Department looks after the existing administrative arrangements of the College. A letter of 9th June, 2014 of the Ministry of Human Resources Development, Government of India has also been placed

to show that the College has been described as “Government aided”.

Although the petitioner has sought to persuade the Court that the College qualifies as an entity amenable to the writ jurisdiction of the Court, the fact that the College has been described and confirmed as a private Engineering College which does not receive any recurring grant appears to be an inescapable fact from the documents shown to the Court. This Court finds further support from a Notification dated 10th December, 2021 published by the all India Council for Technical Education which defines a “*Government Aided Institution*” as a technical institution that meets 50% or more of its recurring expenditure out of the grant received from the Government or Government organizations (Clause 2.16). Clause 2.17 describes a “*Government Institution*” as a technical institution established or maintained by the Government. Clause 2.21 defines a “*Private-Self Financing Institution*” as an Institution started by a Society/Trust/Company which does not receive grants from the Central or State Government for meeting its recurring expenditure is clear; that is, the funds shown to have been received by the College is not of a continuous nature and is only designated for a specific purpose. It must also be noted that counsel appearing for the petitioner has been fair

to point out that the respondent College does not strictly fall within the fold of a Government Aided Institution.

Since the documents are against the petitioner on the issue of maintainability, the decisions cited on behalf of the petitioner should first be dealt with. In *Marwari Balika Vidyalyaya vs. Asha Srivastava & Ors.*; (2020) 14 SCC 449 approved from the Government was held to be necessary and formed the subject matter of the dispute. In that decision, the Supreme Court also laid emphasis on the importance of the element of public duty performed by the authority. The requirement of public duty also held in *Janet Jeyapaul vs. SRM University & Ors.* reported in (2015) 16 SCC 530 where the Supreme Court found that the respondent University was notified as a deemed University by the Central Government under the provisions of the UGC Act. In *Ramesh Ahluwalia vs. State of West Bengal & Ors.* reported at (2012)12 SCC 331, the Supreme Court relegated the matter to the Disciplinary Committee by reason of the disputed questions of fact involved in the matter. In *The Belly Sankarpur Rajib Gandhi Memorial Ayurvedic College and Hospital vs. State of West Bengal*, an unreported decision of a Division Bench of this Court in MAT 239 of 2016 also dealt on the public function of imparting education of the concerned

College. In that case, however, the Court specifically found that the College was affiliated to the University of Calcutta and the provisions of the West Bengal College Teachers (Security of Services) Act, 1975 were applicable to the College before later Act of West Bengal University of Health Sciences Act, 2002 came into effect from 23rd April, 2002. The decisions cited on behalf of the petitioner did not involve an entity which is documented as a private entity and hence do not assist the case of the petitioner on the question of maintainability of the writ petition.

The question of the respondent College imparting education cannot be the determining factor when the College admittedly a private self-financing institution. This Court is unable to infer any public element involved in the matter of discharge of a teacher in a private college. It also cannot be said that the petitioner has no other efficacious remedy since the petitioner can file a civil suit for appropriate relief.

The authorities cited on behalf of the respondents including *Sonia Mahesawari vs. State of West Bengal & Ors.*; (2018)4CAL LT 510 (HC), *Sushmita Basu & Ors. vs. Ballygunge Siksha Samity & Ors.*; (2006)7 SCC 680 and *K.K. Saksena vs. International Commission on Irrigation and Drainage & Ors.*; (2015)4 SCC 670 support the proposition that a writ under Article 226 would not lie

to enforce private law rights and that the action of the authority must be in the domain of public law as distinguished from private law. What is most important is that the College is a Private Engineering College and the only relief in the writ petition is against the concerned College.

In view of the above reasons, WPA 4626 of 2018 is dismissed on the ground of the writ petition not being maintainable under Article 226 of the Constitution of India.

(Moushumi Bhattacharya, J.)