

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

**THE HON'BLE JUSTICE HARISH TANDON
&
THE HON'BLE JUSTICE RABINDRANATH SAMANTA**

**MAT 1278 of 2021
CAN 1 of 2021**

Narayana School, Barasat & Anr.

Vs.

Anisur Rahman & Ors.

Appearance:

For the Appellants	:	Mr. Anjan Bhattacharya, Adv. Ms. Anita Shaw, Adv.
For the Respondent no. 1	:	Mr. Abhratosh Majumdar, Adv. Mr. Abhra Majumdar, Adv.
For the Respondent Nos. 2 & 3:		Mr. U.S. Menon, Adv. Mr. Abhirup Chakraborty, Adv.
For the State	:	Mr. Supriya Chattopadhyay, Adv. Mr. Arindam Chattopadhyay, Adv.
Judgment On	:	29.7.2022

Harish Tandon, J.:

The present appeal arises from an order dated 26.11.2021 passed by the Single Bench in WPA 9402 of 2020 negating the claim of the

appellant that the writ petition is not maintainable as the enforceability is sought to the private contracts and further directions were passed for production of the documents and refusal to extend the time for filing the affidavits.

The writ petition was filed by the respondent No.1 against the Central Board of Secondary Education as well as the appellants assailing the action of the appellants for reduction of the salary to the extent of 40 per cent and the complete stoppage of the payment of salary since July, 2020 without any Rules to have been followed.

The respondent No.1 herein was appointed to the post of English teacher in Narayana School, Barasat, the appellant No.1 herein, with effect from March 07, 2017. The employment contract was handed over to the respondent No.1 and was duly executed though it is stated that it contains certain blank informations therein. Subsequently, grievance was raised over the poor pay structure of the teachers and the lack of basic securities relating to their service. Several representations were made by the teachers of the said school but ultimately, the said appellant No.1 unilaterally reduced the salary to the extent of 40 per cent without prior notice or a consent taken from a respective teacher. The representations were made when the said appellant No.1 decided to stop the salary of the respondent No.1 and thereafter, the writ petition was filed alleging that the appellant No.1 being the affiliated school with the Central Board of Secondary Education discharges the public functions and are bound by the bye-laws of affiliation which is a statutory document.

It is not in dispute that the appellant was appointed at a fixed remuneration indicating the probation period to be of one year from the date of the joining. It is also not in dispute that despite the expiration of the probation period, the petitioner continued to render services and the document annexed in the instant appeal would reveal that the salary slip was issued by the appellant No.1 till February, 2020. The appellant No.1 took a preliminary objection that the writ petition for enforcement of the private contract is not maintainable against the said appellants and the respondent No.1 has volunteered not to join the said school since last several months. However, the Division Bench set aside the earlier order of the Single Bench and directed the respondent No.1 to join and the remitted the matter to the Single Bench to decide the same.

By the impugned order, the Single Bench recorded the event happened before it when the school authority submitted that despite the order, the respondent No.1 did not join the school and further raised a plea of maintainability of the writ petition. While upholding the maintainability point in favour of the respondent No.1, the Single Bench directed the appellants to produce the biometric device before the Court to ascertain whether the respondent No.1, in fact, went to join school or not.

In our opinion, the second point relating to joining or non-joining of the respondent No.1 takes a back seat for the simple reason that the moment it is found that the writ petition is not maintainable, the said question would be mere academic. Even the counsel appearing for the respective parties have restricted their arguments on the maintainability of

the writ petition and therefore, we feel that it would be an ardent duty to decide the said point first.

Mr. Anjan Bhattacharya, the learned advocate appearing for the appellant submits that the Single Bench has misinterpreted the judgment of ***Ramakrishna Mission and Another vs. Kago Kunya and Others, reported in (2019) 16 SCC 303*** and culled out certain portions therefrom without venturing to go into the ultimate findings made therein in upholding the maintainability of the writ petition. He arduously submits that the Single Bench has not considered the distinction between the discharge of public duty and the involvement of public law elements which has been succinctly laid down in the above report. Mr. Bhattacharya vehemently submits that even a private institution/organization may discharge the public duties but that itself cannot be a ground for maintainability of the writ petition, more particularly, when the dispute raised in the writ petition does not involve the public law elements. He further submits that the Single Bench has miserably failed to take into consideration that the contract of service is within the realm of a private law and even if the institution/organization discharges public duties, yet enforceability of a private law cannot be secured by filing the writ petition. He put more emphasis on the fact that mere affiliation with the Central Board of Secondary Education does not render the institution of public authority or the other authority within the meaning of Article 226 of the Constitution of India when there is no public element involved in discharge of such public duty. He, thus, submits that the Single Bench ought to have held that the

writ petition is not maintainable to enforce the private contract and therefore, the impugned order is required to be set aside.

Mr. Majumdar, the learned advocate appearing for the respondent No.1 submits that writ petition is maintainable against the private institution/organization if their primary function is to discharge the public duties. He further submits that there is a catena of judgments wherein it is held by the Supreme Court that even a private body is amenable to the jurisdiction under Article 226 of the Constitution of India, if discharge the public duties. The restrictive meaning given to an authority under Article 12 of the Constitution would undermine the basic structure of the Constitution which engulfed the powers of the High Court under Articles 226 and 227 thereof. He further submits that the writ petition against the private body/organization/institution is maintainable if there is a gross violation of the principle of natural justice which is one of the fundamental rights enshrined in the Constitution and relied upon the judgment of the Supreme Court in case of ***State of Uttar Pradesh vs. Sudhir Kumar Singh & Ors. reported in AIR 2020 SC 5215***. Mr. Majumdar further submits that it is not a rigid rule that the dispute pertaining to a contract cannot be enforced through the writ remedies and therefore, it is to be decided on the basis of the facts involved in the given case. It is further submitted that the appellant No.1 being a self-financed educational institution is affiliated with the Central Board of Secondary Education which is an authority within the meaning of Article 12 of the Constitution and therefore, the bye-laws relating to affiliation assume the statutory character and any violation thereof is

capable of being redressed through a writ mechanism. He, thus, submits that there is no infirmity and/or illegality in the order of the Single Bench in upholding the maintainability in favour of his client.

Mr. Menon, learned advocate appearing for the Central Board of Secondary Education submits that the respondent no.1 is affiliated with the said authority and therefore, the bye-laws have a binding force. He further submits that the said board is otherwise competent to frame bye-laws relating to affiliation and therefore, the affiliated school cannot violate the clauses of the said bye-laws. However, he candidly submits that such bye-laws are applicable only for the purpose of an affiliation and the board does not have, either direct or pervasive control, over the functioning of the private educational institution administratively or economically. He, thus, submits that the board does not have any control over the appointment of the teachers being neither an appointing nor a disciplinary authority but certainly retains control in relation to the curriculum examination and the issuance of the certificates to the students of the said institution.

On the conspectus of the aforesaid facts and the submissions advanced before us, the seminal point in the instant appeal is whether the writ petition is maintainable against the appellants' institution being a self-financed private school though discharging the public duties for enforcement of the conditions of services of the teachers having involvement of a public law element.

Before we proceed to return our finding on the various decision cited before us as well as the argument so advanced it would be apposite to assimilate the ratio of law laid down therein.

In case of ***K. Krishnamacharyulu & Ors. vs. Sri Venkateswara Hindu College of Engineering & Anr. reported in (1997) 3 SCC 571***, the two Judge Bench of the Supreme Court considered a case where the seven persons who were appointed on daily wages to the post of Laboratory Assistant as non-teaching staff in purely private educational institutions moved a writ petition seeking equal pay for equal work at par with the Government employee. An executive instruction was issued by the appropriate Government to extend the benefit of pay scale at par with the Government employee and the question that fell for consideration was whether the educational institution who is not receiving any grant from the Government is amenable to the jurisdiction of the High Court under Article 226 of the Constitution in absence of any statutory Rule. The Apex Court held that once the interest is created by the Government into the institution to impart education which is recognised as a fundamental right of a citizen, the teachers who are imparting education shall get an element of the public interest in performing his duties and, therefore, it is imperative to regulate the condition of service at par with the Government employees. It was further held that it is a primary obligation of the State to provide the infrastructure, facilities and the opportunities to the people to avail the right of education and once such obligations are foisted upon the private institutions, the teachers appointed therein shall not be deprived to seek

enforcement of the orders passed by the Government and, therefore, the duties and functions discharged by the private educational institutions has a public element and, therefore, amenable to the jurisdiction of the High Court under Article 226 of the Constitution. However, it was further held that it would be totally different when the remedy lies within the realm of the private law in these words:

“4. It is not in dispute that executive instructions issued by the Government have given them the right to claim the pay scales so as to be on a par with the government employees. The question is when there are no statutory rules issued in that behalf, and the institution, at the relevant time, being not in receipt of any grant-in-aid; whether the writ petition under Article 226 of the Constitution is not maintainable? In view of the long line of decisions of this Court holding that when there is an interest created by the Government in an institution to impart education, which is a fundamental right of the citizens, the teachers who impart the education get an element of public interest in the performance of their duties. As a consequence, the element of public interest requires regulation of the conditions of service of those employees on a par with government employees. In consequence, are they also not entitled to the parity of the pay scales as per the executive instructions of the Government? It is not also in dispute that all the persons who filed the writ petition along with the appellant had later withdrawn from the writ petition and thereafter the respondent-Management paid the salaries on a par with the

government employees. Since the appellants are insisting upon enforcement of their right through the judicial pressure, they need and seek the protection of law. We are of the view that the State has obligation to provide facilities and opportunities to the people to avail of the right to education. The private institutions cater to the need of providing educational opportunities. The teacher duly appointed to a post in the private institution also is entitled to seek enforcement of the orders issued by the Government. The question is as to which forum one should approach. The High Court has held that the remedy is available under the Industrial Disputes Act. When an element of public interest is created and the institution is catering to that element, the teacher, being the arm of the institution, is also entitled to avail of the remedy provided under Article 226; the jurisdiction part is very wide. It would be a different position, if the remedy is a private law remedy. So, they cannot be denied the same benefit which is available to others. Accordingly, we hold that the writ petition is maintainable. They are entitled to equal pay so as to be on a par with government employees under Article 39 (d) of the Constitution.”

The Division Bench in case of *The Governing body, Durgapur Institute of Advance Technology and Management & Ors. vs. Subhangshuman De & Ors. reported in 2015 SCC Online Cal 6561* was considering a case where Respondent no. 1 who was issued an appointment letter could not join on or before the period provided therein because of having met with an accident and admitted in the hospital and later on was

refused by the authorities to join his duty after his recovery. The Writ Petition was filed before this Court and an order was passed by the Single Bench directing the appellant therein to permit the Respondent no. 1 to join his duty. The said order was assailed before the Appellate Court and a plea was taken that since the said educational institution is not a “State” within the meaning of Article 12 of the Constitution of India neither the Writ Petition is maintainable nor any order of such nature could be passed by the Single Bench. In the backdrop of the aforesaid facts, the Division Bench held:

“11. In Paragraph 2 the petitioner had stated that the Institute was a recognized institution under the All India Council for Technical Education which was a statutory body under the Govt. of India recognized by the U.G.C and it was affiliated to the West Bengal University of Technology. The Respondents did not deny this part of the statement of the Petitioner to the effect that it was a recognized Institution of the All India Council For Technical Education, a statutory body under the Govt. of India recognized by the U.G.C and affiliated to the West Bengal University of Technology. All that they said was they denied and disputed everything except what were matters of record. They have, however, not stated anything with regard to the aforementioned statement of the Petitioner. In a Judgment of the Hon’ble the Supreme Court passed in the case of Ramesh Ahluwalia v. State of Punjab reported in (2012) 12 SCC 331 it has inter-alia been held that if a Respondent performs public

functions and provides education to children in their institutions, then the issuance of a Writ cannot be withheld merely because the Respondent is a purely unaided private educational institution. In the instant case the institution imparts education for purposes of fostering technical education after being recognized by a statutory body being the All India Council for Technical Education. That being the position, the Appellants cannot escape by saying that the Writ Petition is not maintainable. Moreover, in the facts and circumstances of this case, we cannot ignore that under Article 226 of the Constitution of India, wide powers have been conferred upon the High Courts to issue high prerogative writs to correct errors and/or injustice meted out to citizens of India and for the enforcement of their fundamental rights. On the basis of the aforementioned analogy, we are not inclined to accept the submissions of the learned Counsel for the Appellant that the Writ Petition itself was not maintainable.”

In *Ramesh Ahluwalia vs. State of Punjab & Ors. reported in (2012) 12 SCC 331*, the facts involved in the said case are somehow similar to the facts of the instant case. The appellant therein was working as Administrative Officer in the privately runned educational institution and was removed from service in a disciplinary proceedings initiated against him by the managing committee of the said educational institution. The writ petition was filed before the Single Bench of the High Court challenging the order of the disciplinary authority wherein he was removed from service which was dismissed in limine holding that the said educational institution

being an unaided and private school managed by the society is not an instrumental of the State. The appeal before the Division Bench was further dismissed and the matter travelled to the Supreme Court. The seminal point which was urged before the Supreme Court pertains to the maintainability of the writ petition against the private educational institution. An argument was advanced on behalf of the appellant that even though the private educational institutions may not fall within the definition of a State or other authorities/instrumentalities of the State under Article 12 of the Constitution yet the writ petition would be maintainable as the Said private educational institution discharges the very important public functions by imparting education throughout the country. However, the Council for the educational institution took a plea that in order to constitute a body falling within the definition of the State it is important to consider whether such body is financially, functionally and administratively dominated by or under the control of the Government. It was further argued that if the control is merely regulatory either under a statute or otherwise it does not ipso facto make the body a State within the meaning of the said Article. On the conspectus of the aforesaid facts and the submissions advanced it has been held that the writ petition would be maintainable if the private educational institution discharges the public functions, more particularly, providing education throughout the country. Interestingly, the court refused to extend any benefits to the teacher as the case involves the disputed question of facts and directed the matter to be decided by appropriate tribunal/court in the following:

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

15. We must, however, notice that the learned Single Judge has dismissed the writ petition also on the ground that it involves disputed questions of fact. Mr. Ray, learned counsel appearing on behalf of the respondents has submitted that the appellant actually has not been able to contradict any of the proven facts. According to the learned counsel, the remedy of the appellant is to file a civil suit, if so advised. Therefore, the writ petition has been rightly dismissed by the High Court. Mr. Parikh, learned counsel for the appellant, however, submits that the civil suit would not be an alternative efficacious remedy in the facts of this case. In support of this submission, he brought to our notice certain observations made by a Constitution Bench of this Court in T.M.A Pai Foundation v. State of Karnataka. The learned counsel pointed out that, in the aforesaid case, this Court had directed that the Appellate Tribunal should be set up in each district of each State to hear appeals over the decisions taken by the disciplinary bodies of even purely private educational

institutions. It was emphasised that speedy resolution of the disputes between the teachers and the management is in the interest of all i.e. students, management as well as the teachers concerned. It appears that at the time when the appeal of the appellant was heard, such a tribunal had not been set up in the State of Punjab. The appeal filed before the Disciplinary Committee was also not referred to the District Judge by the Disciplinary Committee.

16. We are of the considered opinion that since the writ petition clearly involves disputed questions of fact, it is appropriate that the matter should be decided by an appropriate tribunal/court.”

In case of ***Pramati Educational and Cultural Trust (Registered) & Ors. vs. Union of India & Ors reported in (2014) 8 SCC 1*** the five Judge Constitution Bench of the Supreme Court was called upon to decide the validity of Clause (5) of Article 15 of the Constitution inserted by the Constitution (93rd Amendment) Act, 2005 with effect from 20th January, 2006 and on the validity of Article 21(A) of the Constitution inserted by the Constitution (86th Amendment) Act, 2002 with effect from 1.4.2010 by the three Judge Bench of the Apex Court in case of ***Society for Unaided Private Schools of Rajasthan vs. Union of India reported in (2012) 6 SCC 102***. The three Judge Bench noticed the earlier Constitution Bench judgment of the Apex Court in ***Ashoka Kumar Thakur vs. Union of India reported in (2008) 6 SCC 1*** wherein the constitutional validity of Clause (5) of Article 15 of the Constitution was validly held and does not violate the basic structure of the Constitution relating to the State maintained

institutions and aided educational institutions. The three Judge Bench found that whether the said Clause (5) of Article 15 of the Constitution can be held to be constitutionally valid in relation to a private unaided educational institution which was not decided by the earlier Constitution Bench decision in ***Ashoka Kumar Thakur (Supra)*** and referred the matter to five Judge Constitutional Bench. In pursuit of deciding aforesaid point of reference, the Constitutional Bench noticed the language employed in Article 21(A) of the Constitution mandating the State to provide free and compulsory education to all the children of the age of 6-14 years in such manner as the State may, by law, determined. The word “State” was interpreted to mean a State which can make law and not the private unaided educational institutions who are not vested with the powers to enact law. The Apex Court also did not find any conflict amongst Article 21A, regulating the right of private unaided school under Article 19 (1) (g) and the right of minority schools under Article 30 (1) of the Constitution but held that the law made under Article 21A may affect these rights under Article 19 (1) (g) and 30 (1) of the Constitution. It is thus held that law pertaining to free and compulsory education to the children between the age of 6 and 14 does not abrogate the rights of the unaided private educational schools under Article 19 (1) (g) and the minority schools aided or unaided under Article 30 (1) of the Constitution. Ultimately it was held that the 2009 Act relating to free and compulsory education to the children between the age of 6-14 as amended under Article 21A of the Constitution is aimed to provide the free and compulsory education is consistent with the right under Article 19 (1) (g) of the Constitution of the Constitution in order to achieve

the constitutional vision of providing equal opportunity to the children of the weaker section and disadvantaged groups on the society and, therefore, does not violate article 19 (1) (g) of the Constitution. It was ultimately held that the members of the communities who, other than the minority community which has established the school cannot be forced upon a minority institution as it may destroy the minority character of the school, in the following:

“53. When we examine the 2009 Act, we find that under Section 12 (1)(c) read with Section 2 (n)(iv) of the Act, an unaided school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority is required to admit in Class I, to the extent of at least twenty-five per cent strength of that class, children belonging to weaker section and disadvantaged group in the neighbourhood and provide free and compulsory elementary education till its completion. We further find that Section 12(2) of the 2009 Act such a school shall be reimbursed expenditure so incurred by it to the extent of per-child-expenditure incurred by the State, or the actual amount charged from the child, whichever is less, in such manner as may be prescribed. Thus, ultimately it is the State which is funding the expenses of free and compulsory education of the children belonging to weaker sections and several groups in the neighbourhood, which are admitted to a private unaided school. These provisions of the 2009 Act, in our view, are for the purpose of providing free and compulsory education to children between the age

group of 6 to 14 years and are consistent with the right under Article 19 (1)(g) of the Constitution, as interpreted by this Court in T.M.A Pai Foundation and are meant to achieve the constitutional goals of equality of opportunity in elementary education to children of weaker sections and disadvantaged groups in our society. We, therefore, do not find any merit in the submissions made on behalf of the non-minority private school that Article 21 – A of the Constitution and the 2009 Act violate their right under Article 19(1)(g) of the Constitution.

55. When we look at the 2009 Act, we find that Section 12(1)(b) read with Section 2(n)(ii) provides that an aided school receiving aid and grants, whole or part, of its expenses from the appropriate Government or the local authority has to provide free and compulsory education to such proportion of children admitted therein as its annual recurring aid or grants so received bears to its annual recurring expenses, subject to a minimum of twenty-five per cent. Thus, a minority aided school is put under a legal obligation to provide free and compulsory elementary education to children who need not be children of members of the minority community which has established the school. We also find that under Section 12(1)(c) read with Section 2(n)(iv), an unaided school has to admit into twenty-five percent of the strength of Class I children belonging to weaker sections and disadvantaged groups in the neighbourhood. Hence, unaided minority schools will have a legal obligation to admit children belonging to weaker sections and disadvantaged groups in

the neighbourhood who need not be children of the members of the minority community which has established the school. While discussing the validity of clause (5) of Article 15 of the Constitution, we have held that members of communities other than the minority which has established the school cannot be forced upon a minority institution because that may destroy the minority character of the school. In our view, if the 2009 Act is made applicable to minority schools, aided or unaided, the right of the minorities under Article 30(1) of the Constitution will be abrogated. Therefore, the 2009 Act insofar it is made applicable to minority schools referred in clause (1) of Article 30 of the Constitution is ultra vires the Constitution. We are thus of the view that the majority judgment of this court in Society for Unaided Private Schools of Rajasthan v. Union of India insofar as it holds that the 2009 Act is applicable to aided minority schools is not correct.”

In ***Marwari Balika Vidyalaya vs. Asha Srivastava & Ors. reported in (2020) 14 SCC 449***, the point involved therein relates to the maintainability of the writ petition against the private school receiving grant-in-aid to the extent of Dearness Allowance. A writ petition was filed by a teacher challenging a show cause notice issued by the Secretary of the managing committee while the said teacher has moved the writ petition impleading the District Inspector of Schools (Primary Education, Calcutta) as party in the proceeding which originated on the inaction or delay on the part of the said authority in not granting approval to such appointment

which was forwarded by the school authority. The said proceeding originated on the show cause notice and culminated into an order of termination. The Apex Court held that the writ petition is maintainable even against the private unaided educational institution in view of the undisputed facts that the moment the approval for appointment is sought from the Government Authority the approval for removal and/or termination is also required and in absence thereof such removal cannot be said to be proper.

The aforesaid case though it relates to the private school but the said school was receiving a grant-in-aid to the extent of Dearness Allowance. The appointment and the removal is required to be approved by the District Inspector of School (Primary Education) and if any action is taken de hors such mandatory provisions does not come within the realm of a private law element.

In ***Jigya Yadav vs. Central Board of Secondary Education reported in (2021) 7 SCC 535***, the batch of 22 petitions for corrections/change in the name, surname, date of birth or the name of their parents in the certificate issued Central Board of Secondary Education were taken into consideration. One of the questions framed therein relate to the enforceability of CBSE Examination Bye-laws as a force of law. The Apex Court held that by virtue of Government of India resolution dated 1.7.1929, the CBSE came to be established to play a useful role in the field of the secondary education and extended services to various educational institutions within the country. One of the cardinal functions entrusted upon a Board is to make regulations for giving effect to the aforesaid

resolutions which imbibe within itself the conditions for issuing certificate for examination conducted by the Board. The Article 18 of the Constitution of the Board empowers to make bye-laws in consistent with the regulations and the resolution being the source of its existence but purely on a procedural aspect which indubitably renders it not backed by the statute and, therefore, cannot be characterised as statutory. However, the Apex Court held that even the bye-laws is not statutory whether it has a force of law in co-relation with Article 13 of the Constitution. The Apex Court held that such bye-laws have a force of law and, therefore, the scrutiny cannot be abridged by giving any artificial colour to it and held that the CBSE is discharging the public function and its duties and obligations have a public element and, therefore, comes within the ambit of the State under Article 12 of the Constitution in these words:

“105. Indubitably, the CBSE Board came to be established vide Government of India Resolution dated 1-7-1929 with a view to “enable it to play a useful role in the field of Secondary Education” and “make the services of the Board available to various educational institutions in the country, as stated in the Constitution of the Board. Article 9 of the said Constitution deals with the “Powers and Functions of the Board”, which include to do all such things as may be necessary for furthering the objectives of the Board. One of the functions or so to say power of the Board is to make regulations for giving effect to the aforesaid resolution as predicated in Article 16 of the Constitution. Clause (2) thereof envisages that the Regulation so

framed may provide for conditions for issuing certificates for examination conducted by the Board. We may also take note of Article 18 of the Constitution of the Board, which makes it amply clear that the bye-laws to be framed by the Board ought to be consistent with and subservient to the Regulations and the Resolution establishing the Board. This Article also indicates that bye-laws may be made for the purposes referred to in clauses (a) and (c) pertaining to procedural aspects. Indisputably, the constitution/organisation or structure of CBSE is not backed by a statute. It is, therefore, a misnomer to characterise bye-laws framed by the Board as statutory.

115. CBSE is the only Central body for conducting examinations in the country created by a resolution of the Central Government. All the bodies constituted at various levels are working in the direction of just educational governance. Article 41 of the Constitution, couched as a directive, is the source behind the basic functioning of the CBSE Board as it secures nothing but right to education. It is participating in educational affairs which form an intrinsic part of social affairs. The CBSE Board is a public authority functioning in public interest for the performance of a public function.

120. As in the ultimate analysis, the bye-laws operate as law, the scrutiny of this Court cannot be undermined by giving them an artificial colour. For a student enrolled with the CBSE, there is no other body of rules but the subject bye-laws for dealing with all significant aspects of her education. By now it is an established tenet

that even body corporate, cooperative societies, registered societies, etc. can be declared as instrumentalities of the State, for the only reason that the outer form of organisation must not be allowed to defeat the ultimate constitutional goal of protection of fundamental rights as and when they suffer at the hands of the State, directly or indirectly. The court ought to intervene with circumspection even when the public body derives its authority from a government resolution.

122. Arguendo, the examination Bye-laws are not “law” under Article 13, it would not affect the power of the court to scrutinise them in reference to Part III of the Constitution of India as CBSE is “State” within the meaning of Article 12 and all its actions are consequently subject to Part III.”

In ***Ramakrishna Mission (supra)***, the plea as to maintainability of the writ petition against the appellant therein being the State within the meaning of Article 12 of the Constitution in a writ petition filed by the first respondent therein as a general duty worker and later on promoted to the substantive portion of nursing aid was made to retire upon completion of 35 years of service in terms of the sub-service rules applicable thereupon was involved. The contention of the first respondent in this regard was that the appellant therein who was running a hospital was availing the funds towards the part of the expenditure in a 263 bedded hospital, was discharging a public duty. It was brought to the notice of the Apex Court that the portion of the income of the hospital is generated out of the grants

received from the State and the land over which such hospital was constructed was granted by the Government on a concessional rate and therefore, the appellant therein is a State within the meaning of Article 12 of the Constitution of India having discharging the public functions. The Apex Court took into consideration the various judgments rendered in this behalf and held that though it is difficult to draw a line between the public functions and the private functions more particularly, when it is discharged by a purely private authority being somewhat blurred yet this scope of the mandamus is required to be determined on the basis of the nature of the duties to be enforced despite the fact that the said authority is discharging the public function and such discharge of duty may be statutory or otherwise as the source of power is immaterial and therefore, it is obligatory on the part of the Court to consider whether the mandamus can be issued against such private body discharging the public duties to enforce the private law rights. It would be apposite and profitable to quote the relevant excerpts from the said report which runs thus:

“26. In Federal Bank Ltd. V. Sagar Thomas, this Court analysed the earlier judgements of this Court and provided a classification of entities against whom a writ petition may be maintainable.

“18. From the decisions referred to above, the position that emerges is that a writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State (Government); (ii) an authority; (iii) a statutory body;

(iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature; and (viii) a person or a body under liability to discharge any function under any statute, to compel it to perform such a statutory function.”

27. In Binny Ltd. v. V. Sadasivan, a two-Judge Bench of this Court noted the distinction between public and private functions. It held thus:

“11. ... It is difficult to draw a line between public functions and private functions when they are being discharged by a purely private authority. A body is performing a ‘public function’ when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so. Bodies therefore exercise public functions when they intervene or participate in social or economic affairs in the public interest.”

28. The Bench elucidated on the scope of mandamus:

“29. ... However, the scope of mandamus is limited to enforcement of public duty. The scope of mandamus is

determined by the nature of the duty to be enforced, rather than the identity of the authority against whom it is sought. If the private body is discharging a public function and the denial of any right is in connection with the public duty imposed on such body, the public law remedy can be enforced. The duty cast on the public body may be either statutory or otherwise and the source of such power is immaterial, but nevertheless, there must be the public law element in such action..... There cannot be any general definition of public authority or public action. The facts of each case decide the point.”

29. More recently in K. K. Saksena v. International Commission on Irrigation & Drainage, another two Judge Bench of this Court held that a writ would not lie to enforce purely private law rights. Consequently, even if a body is performing a public duty and is amenable to the exercise of writ jurisdiction, all its decisions would not be subject to judicial review. The Court held thus:

“43. What follows from a minute and careful reading of the aforesaid judgments of this Court is that if a person or authority is ‘State’ within the meaning of Article 12 of the Constitution, admittedly a writ petition under Article 226 would lie against such a person or body. However, we may add that even in such cases writ would not lie to enforce

private law rights. There are a catena of judgments on this aspect and it is not necessary to refer to those judgments as that is the basic principle of judicial review of an action under the administrative law. The reason is obvious. A private law is that part of a legal system which is a part of common law that involves relationships between individuals, such as law of contract or torts. Therefore, even if writ petition would be maintainable against an authority, which is 'State' under Article 12 of the Constitution, before issuing any writ, particularly writ of mandamus, the Court has to satisfy that action of such an authority, which is challenged, is in the domain of public law as distinguished from private law."

30. Thus, even if the body discharges a public function in a wider sense, there is no public law element involved in the enforcement of a private contract of service.

31. Having analysed the circumstances which were relied upon by the State of Arunachal Pradesh, we are of the view that in running the hospital, Ramakrishna Mission does not discharge a public function. Undoubtedly, the hospital is in receipt of some element of grant. The grants which are received by the hospital cover only a part of the expenditure. The terms of the grant do not indicate any form of governmental control in the management or day to day functioning of the hospital. The

nature of the work which is rendered by Ramakrishna Mission, in general, including in relation to its activities concerning the hospital in question is purely voluntary.”

It has been succinctly laid down in the ***Ramakrishna (supra)*** that even if the institution, body or the organization are bound to adhere the various obligations imposed under the law but the very existence of the organization, body or the institution does not emanate from the statute shall not make such authority amenable under Article 226 of the Constitution of India. It is further highlighted that every individuals or the organizations are bound by the statutory requirements either in some or whole of the activities yet it does not invite the Court to invoke Article 226 of the Constitution if the right sought to be enforced is private in nature in the following:

“33. It has been submitted before us that the hospital is subject to regulation by the Clinical Establishments (Registration and Regulation) Act, 2010. Does the regulation of hospitals and nursing homes by law render the hospital a statutory body? Private individuals and organizations are subject to diverse obligations under the law. The law is a ubiquitous phenomenon. From the registration of birth to the reporting of death, law imposes obligations on diverse aspects of individual lives. From incorporation to dissolution, business has to act in compliance with law. But that does not make every entity or activity an authority under Article 226. Regulation by a statute does not constitute the hospital as a body which is constituted under the

statute. Individuals and organisations are subject to statutory requirements in a whole host of activities today. That by itself cannot be conclusive of whether such an individual or organisation discharges a public function. In Federal Bank, while deciding whether a private bank that is regulated by the Banking Regulation Act, 1949 discharges any public function, the Court held thus:

‘33. ... in our view, a private company carrying on banking business as a scheduled bank, cannot be termed as an institution or a company carrying on any statutory or public duty. A private body or a person may be amenable to writ jurisdiction only where it may become necessary to compel such body or association to enforce any statutory obligations or such obligations of public nature casting positive obligation upon it. We don’t find such conditions are fulfilled in respect of a private company carrying on a commercial activity of banking. Merely regulatory provisions to ensure such activity carried on by private bodies work within a discipline, do not confer any such status upon the company nor put any such obligation upon it which may be enforced through issue of a writ under Article 226 of the Constitution. Present is a case of disciplinary action being taken against its employee by the appellant Bank. The

respondent's service with the Bank stands terminated. The action of the Bank was challenged by the respondent by filing a writ petition under Article 226 of the Constitution of India. The respondent is not trying to enforce any statutory duty on the part of the Bank.'

34. Thus, contracts of a purely private nature would not be subject to writ jurisdiction merely by reason of the fact that they are structured by statutory provisions. The only exception to this principle arises in a situation where the contract of service is governed or regulated by a statutory provision. Hence, for instance, in K.K. Saksena this Court held that when an employee is a workman governed by the Industrial Disputes Act, 1947, it constitutes an exception to the general principle that a contract of personal service is not capable of being specifically enforced or performed."

The Single Bench of this Court in an unreported judgment delivered in case of ***Mainak Mohan Das vs. The State of West Bengal & Ors. (WPA 4626 of 2018, decided on 09.12.2021)*** held that writ petition under Article 226 of the Constitution would not lie to enforce the private law contracts more particularly, when the action of the authority is not in the realm of a public law. It was further held that the matter involving the discharge of the teacher in a private self-financed educational institution is within the domain of a private law and its enforcement cannot be secured; in these words:

“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) 4 CAL LT 510 (HC), Sushmita Basu & Ors. vs. Ballygunge Siksha Samity & Ors.; (2006) 7 SCC 680 and K.K. Saxena 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.”

Even in case of ***Sonia Maheswari vs. State of West Bengal & Ors. (WP 18224 (w) of 2018 decided on 10.01.2019)*** the Single Bench held that the dispute, concerning the demand for refund of salary allegedly paid in excess being not in conformity with the extant rules in relation to a private educational institution, is not maintainable in the following :

“28. The grievance of the petitioner is that the respondent institute is wrongfully demanding refund of salary allegedly paid in excess since the appointment of the Petitioner as Assistant Headmistress was allegedly not as per extant Rules and was irregular. This grievance pertains to the service condition of the petitioner and is in the domain of private law. It is not that the petitioner is bereft of a remedy. An ordinary civil action is available to her. I am of the considered opinion that in view of the several judgments discussed above, a writ should not be issued to enforce a private law right.

29. In view of the aforesaid, the preliminary point raised by Mr. Bari, Learned Advocate, succeeds to the extent that even assuming that the respondent institute is in principle amenable to the writ jurisdiction of this Court giving a liberal construction to the word ‘Authority’ in Art. 226 of the Constitution, no public law element is involved and no public law right of the petitioner is infringed. Hence, no writ should be issued. The writ petition fails and is dismissed without, however, any order as to costs.”

In *Trigun Chand Thakur vs. State of Bihar & Ors. reported in (2019) 7 SCC 513*, the appellant therein was appointed as Sanskrit teacher and a show cause notice was issued upon him on the ground that he was absent on the eve of the Independence day and the Teachers day which resulted into a dismissal order passed by the Managing Committee of the private school. The challenge was made by filing the writ petition before the

High Court which were dismissed on the ground that the writ petition is not maintainable against an order terminating the service by the Managing Committee of the private school. The Apex Court held that even if the private school was receiving a financial aid from the Government, it does not make the said Managing Committee of the school a 'State' within the meaning of Article 12 of the Constitution of India.

The judgment rendered by the Supreme Court in case of ***State of Uttar Pradesh (supra)*** relied upon by Mr. Majumdar does not appear to us to have any bearing on the issue involved in the instant case. The tender was issued by the UP State Warehousing Corporation for unloading/loading of the foodgrains/fertilizer bags from/into railway wagons, tracks etc. from the railway station to the godown and vice versa after awarding the contract which subsisted for a period of 10 days and the said authority cancelled the tender citing an administrative reason. Later on, it transpired that the said cancellation was made as the authority thought it impractical to go ahead to the said tender and the tender was reissued for the same work challenging the said action and the plea of breach of audi alteram partem was taken by the said successful tenderer. In the backdrop of the aforesaid fact it was held that the breach of fundamental rights is a public law element as opposed to a breach of contract and the damages flowing therefrom. The writ petition is, thus, maintainable on the ground that it involves the public law elements in the following:

“23. It may be added that every case in which a citizen/person knocks at the doors of the writ court for breach of his or its

fundamental rights is a matter which contains a “public law element”, as opposed to a case which is concerned only with breach of contract and damages flowing therefrom. Whenever a plea of breach of natural justice is made against the State, the said plea, if found sustainable, sounds in constitutional law as arbitrary State action, which attracts the provisions of Article 14 of the Constitution of India- see *Nawabkhan Abbaskhan v. State of Gujarat* (1974) 2 SCC 121: AIR 1974 SC 1471 at paragraph 7. The present case is, therefore, a case which involves a “public law element” in that the petitioner (Respondent No.1 before us) who knocked at the doors of the writ court alleged breach of the audi alteram partem rule, as the entire proceedings leading to cancellation of the tender, together with the cancellation itself, were done on an ex-parte appraisal of the facts behind his back.

24. The other judgments cited by Dr. Singhvi in his Written Submissions are distinguishable on facts, as all of them deal with either Public-Interest Litigations or tender applicants who have been turned down, who approach the writ court under Article 226 and ask for stay orders against a proposed project, which may then be considerably delayed and escalate cost, this being contrary to public interest. It is in these situations that observations have been made that before entertaining such writ petitions and passing interim orders, the writ court must be very careful to weigh conflicting public interests, and should intervene

only when there is an overwhelming public interest in entertaining the writ petition. This is what was held in Raunaq International Ltd. v. I.V.R. Construction Ltd. and Ors. (1999) 1 SCC 492: (AIR 1999 SC 393) at paragraphs 11 to 13, 24 and 25. To similar effect is the judgment in Jagdish Mandal v. State of Orissa and Ors. (2007) 14 SCC 517 at paragraph 22.”

The law enunciated in the above reports leaves no ambiguity that the writ petition is maintainable against the private institution provided it discharges the public duties and most important public functions. Merely because a writ petition can be maintained against the private individuals discharging the public duties and/or public functions yet the writ petition is not maintainable if the enforcement is sought to be secured under the realm of a private law. It would not be safe to say that the moment the private institution is amenable to writ jurisdiction yet every dispute concerning the said private institution is amenable to writ jurisdiction. It largely depends upon the nature of the dispute and the enforcement of the right by an individual against such institution. The right which purely originates from a private law cannot be enforced taking aid of the writ jurisdiction irrespective of the fact that such institution is discharging the public duties and/or public functions. The scope of the mandamus is basically limited to an enforcement of the public duty and, therefore, it is an ardent duty of the court to find out whether the nature of the duty comes within the peripheral of the public duty. There must be a public law element in any action.

In the instant case, the dispute pertains to the action of the appellant in reducing the salary to the extent of 40 per cent and the stoppage of salary from the month of July 2020. Admittedly, the Respondent no. 1 was appointed by the appellant initially for a probation period which was extended from time to time. There is no rule governing such service nor such appointment is required for the approval of the appropriate Government. It is purely a contractual payment and, therefore, in absence of any rules pertaining to such services framed by the appointment it assumes a pure character of a private law and, therefore, the writ jurisdiction cannot be invoked to enforce the private contract.

The plea of the Respondent no. 1 that the appellant is affiliated with the Central Board of Secondary Education and guided and regulated by the bye-laws framed by it does not appear to be correct. The Central Board of Secondary Education though a statutory authority amenable under the writ jurisdiction but, his horizon is restricted to regulating, guiding and conducting the examinations and issuing certificates to the students. The said statutory authority does not have any direct or pervasive control over the private affairs of the institution except to the extent of affiliation nor the appointment of the teachers are required to be approved by it . The said Board has no control over the financial affairs of the institution nor over the functioning of the said institution except to the extent of imparting education in terms of the bye-laws. Even though one of the conditions of the bye-laws appears to have some remotest nexus to the cause of action

pleaded in the writ but the same is within the circumference of the affiliation and does not impinge upon the private contracts.

We, therefore, do not find that the decision of the Single Bench in this regard can be sustained wherein it has been held that the appellant discharging the public duties and/or functions are amenable to the jurisdiction of the Writ Court and writ petition in this regard is maintainable. We have already held that the Respondent no. 1 has sought to enforce the rights emanating from the private law, even if the appellant being the private unaided educational institution is discharging the public duties/functions but the writ petition is not maintainable in relation to a cause of action pleaded in the writ petition.

The point of the maintainability succeeds.

The order impugned is set aside. In the result, the appeal is allowed.

Urgent photostat certified copies of this judgment, if applied for, be made available to the parties subject to compliance with requisite formalities.

I agree.

(Harish Tandon, J.)

(Rabindranath Samanta, J.)

Later:

After the judgement is delivered in open Court, the learned Advocate for the respondent/writ petitioner prays for stay of the impugned judgement.

After considering the submissions and the points, which are involved in the instant writ petition, we do not think that it is a fit case where such prayer can be allowed.

Accordingly, the prayer for stay is refused.

(Harish Tandon, J.)

(Rabindranath Samanta, J.)