

Ml- 13.09.2023
658 Ct.15
rkd

W.P.A. 1181 of 2013

Ganesh Chandra Ghosh

-vs-

The State of West Bengal & Ors.

Mr. Abhishek Banerjee,
Mr. Surajit Basu,
Mr. Samudra Nil Sarkar,
Ms. Barnali Mukherjee,
Mr. Yasraj Roy

....for the petitioner.

Mr. Srijan Nayak,
Mr. Riturparna Mitra,
Mr. Ankit Sureka

....for the State.

The writ petition is heard in presence of the learned advocates representing the petitioner and the State respondents. However, in spite of service of notice upon Tamralipta Cooperative Spinning Mills Limited being respondents Nos.3 & 4, the said authorities are not represented today before this Court.

In the writ petition order of dismissal of the petitioner from the service which he was rendering in Tamralipta Cooperative Spinning Mills Limited (hereinafter referred to as the "said Cooperative") dated 27th June, 2011 and the order of the Appellate Authority dated 24th September, 2012 confirming the order of the Disciplinary Authority dated 27th June, 2011 are under challenge.

At the threshold the Court raises the point

of maintainability of the writ petition on invocation of writ jurisdiction under Article 226 of the Constitution in consideration of the fact that petitioner was an employee of said Cooperative. In order to find out the nature of service contract which the said Cooperative entered with the petitioner while inducting the petitioner as an employee this Court finds it necessary to examine the appointment letter which was issued to the petitioner. However, it has been submitted on behalf of the petitioner that appointment letter is not part of records of this writ petition.

Ordinarily the order passed by the Disciplinary Authority in connection with the service rendered by an employee of a cooperative society does not attract invocation of writ jurisdiction under Article 226 unless a specific case has been made out in the writ petition that there is gross violation of principle of natural justice while conducting disciplinary proceeding against the petitioner.

In the present case on perusal of the order passed by the Disciplinary Authority dated 27th June, 2011 it does not appear that there is gross violation of principle of natural justice by the Disciplinary Authority in initiating and concluding

proceeding against the petitioner. Nothing has been demonstrated before this Court that the right of the petitioner to represent himself before the Enquiry Officer as well as Disciplinary Authority has been breached to such an extent that it would be construed that there is gross violation of principle of natural justice prejudicing right of the petitioner to defend himself before the Enquiry Officer as well as Disciplinary Authority.

In the aforesaid backdrop of findings made by this Court relating to failure to satisfy query if there is gross violation of principle of natural justice this Court is also required to find out whether the writ petition itself is maintainable or not in view of the judgment of the Apex Court, reported in **2022 SCC OnLine SC 1091 (St. Mary's Education Society and Anr. -vs- Rajendra Prasad Bhargava & Ors.)**

The learned advocate representing the State respondents has submitted that the present writ petition is not maintainable in view of the law laid down by the Apex Court in **St. Mary's Education Society** (supra). On perusal of the judgement of the Apex Court this Court finds it apt to quote paragraph 69 of the judgment below:

“69. *We may sum up our final conclusions*

as under : -

- (a) *An application under Article 226 of the Constitution is maintainable against a person or a body discharging public duties or public functions. The public duty cast may be either statutory or otherwise and where it is otherwise, the body or the person must be shown to owe that duty or obligation to the public involving the public law element. Similarly, for ascertaining the discharge of public function, it must be established that the body or the person was seeking to achieve the same for the collective benefit of the public or a section of it and the authority to do so must be accepted by the public.*
- (b) *Even if it be assumed that an educational institution is imparting public duty, the act complained of must have a direct nexus with the discharge of public duty. It is indisputably a public law action which confers a right upon the aggrieved to invoke the extraordinary writ*

jurisdiction under Article 226 for a prerogative writ. Individual wrongs or breach of mutual contracts without having any public element as its integral part cannot be rectified through a writ petition under Article 226. wherever Courts have intervened in their exercise of jurisdiction under Article 226, either the service conditions were regulated by the statutory provisions or the employer had the status of “State” within the expansive definition under Article 12 or it was found that the action complained of has public law element.

- (c) *It must be consequently held that while a body may be discharging a public functions or performing a public duty and thus its actions becoming amenable to judicial review by a Constitutional Court, its employees would not have the right to invoke the powers of the High Court conferred by Article 226 in respect of matter relating to service where they are not*

governed or controlled by the statutory provisions. An educational institution may perform myriad functions touching various facets of public life and in the societal sphere. While such of those functions as would fall within the domain of a “public function” or “public duty” be undisputedly open to challenge and scrutiny under Article 226 of the Constitution, the actions or decisions taken solely within the confines of an ordinary contract of service, having no statutory force or backing, cannot be recognised as being amenable to challenge under Article 226 of the Constitution. In the absence of the service conditions being controlled or governed by statutory provisions, the matter would remain in the realm of an ordinary contract of service.

- (d) Even if it be perceived that imparting education by private unaided the school is a public duty within the expanded expression of the term, an employee of a non-*

teaching staff engaged by the school for the purpose of its administration or internal management is only an agency created by it. It is immaterial whether "A" or "B" is employed by school to discharge that duty. In any case, the terms of employment of contract between a school and non-teaching staff cannot and should not be construed to be an inseparable part of the obligation to impart education. This is particularly in respect to the disciplinary proceedings that may be initiated against a particular employee. It is only where the removal of an employee of non-teaching staff is regulated by some statutory provisions, its violation by the employer in contravention of law may be interfered by the court. But such interference will be on the ground of breach of law and not on the basis of interference in discharge of public duty.

- (e) *From the pleadings in the original writ petition, it is*

apparent that no element of any public law is agitated or otherwise made out. In other words, the action challenged has no public element and writ of mandamus cannot be issued as the action was essentially of a private character.”

It has been succinctly held in **St. Mary’s Education Society** (supra) that individual wrongs or breach of mutual contracts without having any public element as its integral part cannot be rectified through a writ petition under Article 226. In the present case it is found that the principle enunciated by the Apex Court is squarely applicable that too in the backdrop of facts that this Court is not in a position to scrutinise the nature of service contract which was made between the petitioner and the said Cooperative. In ordinary parlance service contract made by a cooperative society with its employees does not have public element requiring invocation of writ jurisdiction under Article 226.

In view of aforesaid discussion, this Court does not find merit in this writ petition and the same stands dismissed since the writ petition is not

maintainable.

However, there shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned Advocates for the parties on the usual undertakings.

(Saugata Bhattacharyya, J.)