

17.11.2023
Court No. 13
Item No. 5
AP

WPA 18630 of 2023

**Sujit Kumar Maity and Ors.
Vs.
The State of West Bengal and Ors.**

Mr. Bikash Shaw

.... For the Petitioners.

Ms. Chandreyi Alam
Ms. Runu Mukherjee

.... For the Union of India.

Mr. Sukanto Chakraborty
Mr. Zubair Ahmed

.... For the Respondent No.6.

1. The petitioners claim to have been appointed as professors of Saroj Mohan Institute of Technology being the respondent No.6. They claim that they are not being paid the pay scale of professors as prescribed by the norms of the All India Council for Technical Education (hereinafter referred to as "the AICTE"). The petitioners seek mandamus upon the respondent No.6 to pay them salary and emoluments applicable to the professors as prescribed by the AICTE.

2. Counsel for the respondent No.6 submits that the writ petition is not maintainable against his client. The respondent No.6 is a purely private, unaided educational institution. No funds are received from the State or the Central Government. It is further submitted that the State/AICTE has no role to play whatsoever in the management and functioning of the respondent No.6

except to oversee standards of education and curriculum.

3. It is further submitted that the petitioners' engagement with the respondent No.6 is a purely private contract of service, cannot be the subject matter of a writ petition under Article 226 of the Constitution of India.

4. Mr. Sukanto Chakraborty, learned counsel for the Respondent No.6, placed reliance on paragraph 75 of the judgement of the Hon'ble Supreme Court in the case of ***St. Mary's Education Society and Anr. Vs. Rajendra Prasad Bhargava and Ors.*** reported in ***(2023) 4 SCC 498***. Reliance is also placed on a decision of a Division Bench of this Court dated ***29th July, 2022*** in ***MAT 1278 of 2021 (Narayana School, Barasat and Anr. Vs. Anisur Rahman and Ors.)***.

5. Counsel for the writ petitioners placed reliance on a decision of a Single Bench of this Court dated 1st June, 2021 in ***WPA 5544 of 2021 (Bineeta Patnaik Padhi Vs. Union of India and Ors.)***.

6. The decision of ***Bineeta Patnaik Padhi (supra)*** cited by the writ petitioners has no application in the facts and circumstances of the instant case.

7. This Court has carefully considered the arguments of both sides. It would be extremely relevant for the purpose of the instant case to set out paragraph 75 of the case of ***St. Mary's Education Society (supra)***.

75. We may sum up our final conclusions as under:

75.1. *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.*

75.2. *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.*

75.3. *It must be consequently held that while a body may be discharging a public function 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.

75.4. Even if it be perceived that imparting education by private unaided 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 with 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.

75.5. 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.”

8. It would also be useful to set out relevant paragraphs of the decision of **Narayana School Barasat (supra)**.

“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.”

9. In both the cases above, several decisions of the Hon’ble Supreme Court binding on this Court under Article 141 of the Constitution of India have been referred to and relied upon, and the law on the subject has been clearly enunciated. It follows from the above that :-

(a) while an institution may be discharging a public duty or a public function, it is only an infraction or a right arising out of such discharge of public function that could be challenged under Article 226 of the Constitution of India.

(b) The act complained of against the body must have a direct nexus with the discharge of the said public function.

(c) If the grievance and/or act is with regard to a service condition, such condition must be

imposed by the Statute and the right asserted must be a statutory one.

(d) A contract of service with a private educational institution discharging public duties cannot be enforced under Article 226 of the Constitution of India. Such contract of service is purely private and does not have statutory force.

(e) A contract of employment between the teaching and non-teaching staff and a private educational institution is severable and separate from the obligation of the private institution to discharge a public function.

10. There is no public element involved in a professor seeking to enforce a private contract of employment against a private educational institution, which is unaided and in which the State has no administrative or financial control.

11. The aforesaid principles deduced hereinabove are clearly attracted the instant case. The petitioners have not been able to demonstrate any statutory force or authority in the respondent No.6 entering into a private contract of employment with them.

12. The grievance of the petitioners that they have not been paid the pay scales for professors by the AICTE cannot, therefore, be adjudicated before this Court under Article 226 of the Constitution of India.

13. The writ petition is, therefore, not maintainable.

14. The petitioners may pursue any other civil or other remedy in accordance with law.

15. Hence, the writ petition is dismissed.

16. There shall be no order as to costs.

17. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)