

**28.11.2023**  
Item No.7  
Ct. No.1  
PG/KS

**W.P.A.(P) 566 of 2023**  
**Smt. Shanta Paul**  
**Vs.**  
**The State of West Bengal & Ors.**

Mr. Arunagshu Chakraborty  
Mr. Arijit Bera  
Ms. Geniya Mukherjee  
Ms. Shrabani Banerjee  
Ms. Zeba Rashid .....for the Petitioner

Mr. Anirban Ray, Ld. GP  
Mr. B. Basu Mallick  
Mr. Arka Kr. Nag .....for the State

Mr. Joydip Kar, Sr. Adv.  
Mr. Pijush Biswas  
Mr. Puspashis Gupta  
Mr. Abhishek Baran Das.....for the respondent  
nos. 3, 5, 6 and 7

Mr. Arunabha Ghosh  
Mr. S.R. Saha  
Mr. S.K. Mukherjee  
Mr. Aksar Sarkar.....for the respondent nos.  
8 & 9

1. This is a public interest litigation filed by a person, who is pursuing her Master's degree in Anthropology and joined Sarva Siksha Mission as Special Educator. The petitioner seeks for issuance of a writ of *quo warranto* for removal of the private respondents.
2. It is pointed out by the Court on an earlier occasion, a more or less identical prayer was sought for, though in slightly differently couched

language in a public interest litigation filed by one Swadesh Majumdar in W.P.A. (P) 522 of 2023, wherein the said petitioner claimed to be a social activist and prayed for issuance of a writ of mandamus to declare the decision to absorb 51 staff of Webel Technology Limited as direct contractual staff of Kazi Nazrul University is being illegal and a nullity. The other prayers sought for are also relating to the 51 staff, who have been brought as direct contractual staff of the Kazi Nazrul University. In the said writ petition, the 51 persons, whose contractual engagement was sought to be questioned were not made parties. However, in this writ petition that defect appear to have been cured and there are several private respondents and the petitioner's contention is that in terms of the provisions of the Kazi Nazrul University Act, 2012 and the rules framed thereunder, they could not be brought as direct contractual staff of Kazi Nazrul University. In fact, identical averments were made in the earlier writ petition as well and this was considered by this Court by order dated 10<sup>th</sup> October, 2023 and dismissed the writ petition. The entire order is quoted for the sake of convenience.

*“1. By way of public interest litigation the petitioner, namely, Sri Swadesh Majumdar stating that he is a taxpayer and social activist has approached this court praying for issuance of a Writ of Mandamus to declare the decision to absorb the 51 staff of Webel Technology Limited as direct contractual staff of Kazi Nazrul University is being illegal and it is a nullity. The other prayers sought for are also relating to the 51 staff who have been brought as direct contractual staff of the respondent University.*

*2. In the writ petition the 51 persons whose contractual engagement is sought to be questioned are not made as parties. Apart from that, the decision taken by the University to make the temporary members of the non-teaching staff recruited through WTL as University’s own contractual staff is a decision taken by the University for better administration.*

*3. In any event, the matter being purely a service matter, no writ petition as a public interest litigation can be entertained.*

*4. The learned counsel appearing for the petitioner would place reliance on the decision of the Hon’ble Supreme Court in Secretary, State of Karnataka and Others v. Uma Devi (3) and Others reported in (2006) 4 SCC 1 and has referred to paragraphs 42 and 43 of the said judgment. The said decision arose out of cases where the temporary employees had sought relief before the Tribunal seeking absorption/*

*regularization. There was also a writ petition filed seeking similar orders and there were two sets of orders passed by the High Court and the matter ultimately travelled to the Hon'ble Supreme Court.*

*5. In our considered view, the decision in Uma Devi (3) can have no application to the case on hand, more importantly, the matter being a service matter, a decision taken by the respondent University to bring certain non-teaching staff as their own contractual staff, such decision cannot be interfered with in a public interest litigation.*

*6. The learned advocate has also referred to a decision in the case of the Hon'ble Supreme Court in the case of State of Punjab v. Bahadur Singh and Others reported in (2008) 15 SCC 737 and has referred to paragraph 12 of the said judgment. In the said paragraph several other decisions of the Hon'ble Supreme Court have been noted and the matter concerns a case for direct regularization in relation to appointments which were irregular in nature.*

*7. In our considered view, the said decision can have no application to the facts and circumstances of the case.*

*8. Learned advocate also placed reliance on the decision of the Hon'ble Supreme Court in MA No.1150 of 2019 in Contempt Petition (Civil) No.1921 of 2017 in Civil Appeal No.6950 of 2009 in the case of Ranbir Singh v. S.K. Roy, Chairman, Life Insurance Corporation*

*and Another dated 27th April, 2022 and has referred to paragraph 72 of the said judgment. The said decision arose out of an order passed by the Hon'ble Supreme Court and the contempt petition was filed alleging disobedience of the order. In paragraph 72 the Hon'ble Supreme Court has pointed out that Life Insurance Corporation as a statutory Corporation is bound by the mandate of Articles 14 and 16 of the Constitution. As a public employer, the recruitment process of the Corporation must meet the constitutional standard of a fair and open process and allowing for back-door entries into service is an anathema to public service. As already pointed out, the matter concerning a service matter cannot be decided in a public interest litigation. Apart from that, the writ petition also suffers from inherent error in not impleading the relevant parties.*

*9. For the above reasons, the writ petition stands dismissed as not maintainable.*

*10. We make it clear that the writ petition has been dismissed as not maintainable and the merits of the decision taken by the University have not been gone into."*

3. In this writ petition, the petitioner has made various averments and allegations contending that 51 people could not be brought under the direct contractual engagement of the Kazi Nazrul

University as there is no relevant provision under the Act or the rules framed thereunder.

4. Firstly, it needs to be pointed out that the relief sought for in this writ petition is wholly and substantially a service matter and in this regard, the Hon'ble Supreme Court in **Dr. Duryodhan Sahu and others v. Jitendra Kumar Mishra and others** reported in **(1998) 7 SCC 273** has held that public interest litigation in service matters is not maintainable. The learned advocate for the petitioner would vehemently contend that such an issue was considered by the Hon'ble Supreme Court in **Special Leave Petition (Civil) Diary No(s). 41779 of 2023** in the case of **Pratap Singh Bist v. The Director, Directorate of Education, Govt. of NCT of Delhi & Ors.** dated 3<sup>rd</sup> November, 2023.
5. We have had the benefit of going through the judgment of the Hon'ble Supreme Court, wherein the Special Leave Petition (Civil) Diary No(s). 41779 of 2023 was dismissed. While doing so, the Hon'ble Supreme Court noted the decision in *Dr. Duryodhan Sahu and others (supra)* and observed that the issue whether public interest litigation is not at all maintainable in service matters is a debatable issue and the said

question of law was left open to be gone into in an appropriate case.

6. Therefore, in our considered view, the decision in the case of *Pratap Singh Bist (supra)* will not, in any manner, advance the cause of the present writ petitioner.
7. The learned advocate for the petitioner placed reliance on the decision of the Constitution Bench of the Hon'ble Supreme Court in the case of **(2020) 2 SCC 1 Kantaru Rajveeru (Sabarimala Temple Review-5J.) v. Indian Young Lawyers Association through its General Secretary & Ors.** and referred to paragraphs 34 to 38 of the said judgment. It has been held by the Hon'ble Supreme Court that "*an erroneous interpretation of the Constitution by a High Court (which affects the general public much more than an erroneous interpretation of a statutory prohibition enacted in public interest) cannot possibly be res judicata as against a judgment of a Constitution Bench of the Supreme Court, as a rule of procedure cannot be exalted over Article 145(3) of the Constitution of India.*"
8. In our considered view, in the earlier public interest litigation, the correctness of the decision taken by the respondent/University was put to challenge and the Court found that the matter

was clearly within the realm of service jurisprudence and declined to entertain the writ petition. For such reason, we are not inclined to entertain the present writ petition as well. Consequently, the writ petition stands dismissed.

9. No costs.

10. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

**(T.S. SIVAGNANAM)**  
**CHIEF JUSTICE**

**(HIRANMAY BHATTACHARYYA, J.)**