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W.A.No.1608 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2023

CORAM :

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE K.KUMARESH BABU**

W.A.No.1608 of 2015

S.Matilda Benedict

... Appellant

-Vs-

1.The Secretary

Regional Educational Officer
Central Board of Secondary Education
Plot No.1630, A, J Block, Anna Nagar West
Chennai 600 040.

2.The Management of Bhakthavatsalam Vidyashram

Rep.by its Correspondent, No.496, A1, A2,
Periyar Nagar, Korattur, Chennai 600 080.

3.Department of School Education and Literacy

Rep.by its Secretary, Ministry of Human Resources
Development, C Wing, Shastri Bhavan, Doctor
Rajendra Prasad Road, Rajpath Area
Central Secretariat, New Delhi -110 001.

4.The Department of School Education

Rep.by its Secretary, Government of Tamil Nadu
Fort St.George, Chennai.

... Respondents

(RR 3 and 4 impleaded as party respondents vide
court order dated 25.06.2019 made in CMP No.
13029/2019 in W.A.No.1608/2015(KKSJ & PTAJ)

Prayer : Writ Appeal under Clause 15 of the Letters Patent against the order in
W.P.No.30711 of 2003 dated 28.11.2014.



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For Appellant : Mr.Balan Haridas
For Respondents : Mr.G.Nagarajan - for R1
Mr.R.Parthiban - for R2
Mr.N.Ramesh - for R3
Mr.K.V.Sajeev Kumar
Special Government Pleader - for R4

J U D G M E N T

(Judgment of the Court was delivered by **R.SURESH KUMAR, J.**)

This appeal has been directed against the order passed by the learned Single Judge Bench, in exercising its power under Article 226 of the Constitution by dismissing the writ petition in W.P.No.30711 of 2003 dated 28.11.2014.

2. The appellant herein stood as the writ petitioner. Her case is that, she is a Post Graduate in English with M.Ed qualification and she joined in the second respondent School on 18.06.1990 with ten years of previous experience in teaching high school students. The second respondent school is affiliated to the first respondent Board and her pay was fixed at Rs.1,743/- in the pay scale of Rs.1200-2040/-, which was the pay scale as fixed by the State Government. The appellant/petitioner was given appointment in the second respondent school by an appointment order dated 18.06.1990.

3. It is the further case of the appellant / petitioner that the service conditions of the teacher working in the school affiliated to the CBSE Board are



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governed by the affiliation bye-laws framed by the first respondent. As per Section 3(iii)(b) of the Affiliation Bye-laws, salary and allowances payable to the teacher shall not be less than the corresponding category in the State Government schools or as prescribed by the Government of India. It is the further case of the appellant / petitioner that the second respondent school, even though fixed the pay scale for her while she joined the service of the School on par with the teachers in the State Government schools, however failed to follow the same in the next coming years.

4. Therefore, in order to correctly fix the salary payable to the appellant / petitioner on par with the teachers who are working in the State Government schools, the petitioner/appellant had filed a writ petition seeking for a writ of Mandamus and that writ petition in W.P.No.23580 of 2003 was disposed of by an order dated 25.08.2003, where a direction was given to consider the representation given by the petitioner / teacher concerned / appellant herein dated 30.07.2001. Only pursuant to the said direction given by this Court in the first round of litigation, the representation of the petitioner having been considered, was rejected through the order dated 06.10.2003 by the second respondent school. Aggrieved over the same, the present writ petition in W.P.No.30711 of 2003 was filed. The said writ petition since has been rejected through the order impugned, it became necessitated for the appellant / petitioner to file the present appeal.



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5. Heard Mr.Balan Haridas, learned counsel appearing for the appellant / petitioner who would submit that, insofar as the second respondent school is concerned, it is a CBSE ie., first respondent Board affiliated school. The Bye-laws of Affiliation ie., CBSE Affiliation Bye-laws governs the functioning of the schools affiliated to the first respondent Board, where Section 7 of the Bye-laws made it clear that, to pay the salaries to the teachers and other categories of staff regularly at least on par with the corresponding categories of the State Government schools, financial reserve shall be continuously maintained by the Management of the school concerned. In Section 10(3) of the Bye-laws, it has been made clear that the school should have well defined conditions of service as per the norms of the State / Union Territory Government and to issue letters of appointment to the employees at the time of joining service and should also sign a contract of service. The contract should be similar to the format given in Appendix-III.

6. Relying upon these clauses, learned counsel for the appellant would contend that, only in consonance with the said bye-laws, a contract has been entered into between the school and the teacher ie., the appellant / petitioner and the second respondent and that is how in the very appointment order itself dated 18.06.1990, condition No.4 has been incorporated, which reads thus,

" 4. You will be governed by the service conditions for teachers prescribed by the CBSE and these conditions shall be regulated by the Management of the Bhaktavatsalam Vidhyashram on matters of



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policy and administrative details and its decision will be final and legally binding."

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7. In fact, at the time of making the appointment, on par with the State Government teachers ie., based on V Pay Commission recommendations, the pay scale has been fixed for the teacher ie., Rs.1743/-. However, subsequently, when a revision has been made by the State Government, by issuance of Government Letter dated 21.09.1998, where the Post Graduate teachers have been given higher pay, that has not been implemented by the second respondent school. That only triggered the appellant/petitioner to make a representation, which was rejected by the order dated 06.10.2003, which was the order impugned before the writ Court. The learned Single Judge did not consider the legal position as well as the factual matrix in proper prospective, and therefore the order impugned dated 28.11.2014 is liable to be interfered with, learned counsel for the appellant contended.

8. On the other hand, Mr.G.Nagarajan learned Standing Counsel appearing for the first respondent / CBSE, relied upon the following averments made in the counter affidavit filed by the first respondent before the writ Court.

" 3. It is submitted that in the above writ petition no relief is prayed against this 1st respondent and as such this 1st respondent is an unnecessary party to this writ petition and the writ petition is liable to be dismissed even on this short ground. I state that with reference to all the allegations in the affidavit under reply relate to



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the appointment of petitioner fixation of her salary and her various representations before the 2nd respondent for the fixation of her scale of pay and this respondent is nothing to do with the same. It is pertinent to note that at no point of time the petitioner has made any representation before the 1st respondent, ventilating her grievances, however with reference to the applicability of the CBSE Affiliation Byelaw regarding the service condition of the teachers and their pay, it is true that the relevant CBSE Affiliation Byelaw says about that the teachers should be paid on par and the scale of pay in the same category received by the State Government Schools. Further the Byelaw 17(2)(i) makes it clear the Affiliation will be withdrawn on "not paying salaries and allowance to teachers and other employees at least at par with those obtaining in State / Union Territory Institutions, default or delay in payment of salaries and allowances.

4. It is submitted that inas much as the 2nd respondent school has obtained affiliation with CBSE on accepting provisions of Byelaw now it is not open to the 2nd respondent to say that they are not bound by CBSE Byelaw. In any case inasmuch as no representation or complaint are made by the petitioner to this 1st respondent and this respondent is not in a position to verify the allegations of the petitioner's insufficient pay with the 2nd respondent. Hence, the 1st respondent is not in a position to controvert the allegations of the petitioner and the counter allegation of the 2nd respondent."

9. Relying upon these averments, the learned counsel appearing for the CBSE would contend that, insofar as the CBSE Regulations are concerned, it is a law



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to be enforced. In this context, the learned counsel would rely upon a decision of the Hon'ble Supreme Court in **Jigya Yadav -vs- CBSE and Others** reported in **(2021) 7 SCC 535**, and would contend that the CBSE Affiliation Byelaws have the force of law and must be regarded as such for all legal purposes.

10. Therefore, the learned counsel would contend that, if at all the CBSE Regulation is violated and if it is brought to the notice of the CBSE Board, certainly action would be taken against the erring institutions including the extreme action of withdrawing the affiliation.

11. However, Mr.R.Parthiban, learned counsel appearing for the second respondent school would contend that, insofar as the second respondent school is concerned, it is not an aided institution, as it is a fully self-financing institution. Though it has got affiliated with the first respondent Board, it does not mean that, in all respects, especially the service conditions of the teaching and non-teaching staff working in the School, the regulations that has been made by the State Government have to be followed. In this context, the learned counsel would further submit that, insofar as the fixing the salary for the teacher concerned ie., the appellant/petitioner, the salary has already been fixed by mutual agreement and that is how even in the appointment order itself, the salary has been fixed and the conditions imposed therein in the appointment order would be binding upon both the parties.



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12. He would also submit that, insofar as the contentions raised by the appellant/petitioner's side as supported by the learned counsel appearing for the CBSE that the CBSE Regulations has got a force of law and therefore it can be enforced and based on the CBSE Affiliation Bye-laws if any conditions have been imposed by the School against the teacher, in this context, it is the salary and that has been fixed based on the salary payable to the teachers of the State Government schools, which since has been emphasized in the CBSE Regulations and the same since has not been followed, then it can be enforced by seeking for a writ of Mandamus before the Court of law ie., High Court by invoking Article 226 is concerned. That kind of proposition is no longer a good law.

13. In this context, learned counsel for the second respondent School very much relied upon the latest decision of the Hon'ble Supreme Court in **St.Mary's Educational Society and Another -vs- Rajendra Prasad Bhargava and Others** reported in **2023 (4) SCC 498**, where the Hon'ble Supreme Court has emphasized the principle to be adopted in these kind of cases, where, if there is a service dispute between a private unaided institution affiliated to CBSE and a teaching / non-teaching staff is concerned, how it should be dealt with, which is the forum to be approached by such aggrieved person, has been exhaustively discussed and decided in this judgment. Therefore, he has relied upon the said judgment and seeks the indulgence of this Court.



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14. Also, learned counsel appearing for the second respondent School would further contend that, insofar as the grievance that has been espoused before this Court by the appellant teacher is concerned, that arises in the year 1990, where the teacher was appointed and therefore, the revised pay scale on par with the Government school teacher has been sought for from the year 1990 onwards. If that being the position, a stale or dead demand cannot be made after many years as has been raised by way of filing a representation. Mere filing of representation after few years or after long years will not give any cause of action to the appellant / petitioner and in this context, the learned counsel relied upon a decision of the Hon'ble Supreme Court in the matter of **Union of India -vs- M.K.Sarkar** in Civil Appeal No.8151 of 2009. Making these submissions, the learned counsel for the second respondent would contend that, since absolutely there has been no merit in the plea raised by the appellant/petitioner, that has been rightly considered and rejected by the learned Judge in the order impugned and therefore, against which no successful challenge can be made by the petitioner/appellant and he seeks dismissal of this appeal.

15. We have considered the elaborate submissions made by the learned counsel for the parties and have perused the materials placed before this Court.

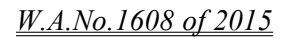


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16. It is an admitted fact that the second respondent school is an unaided private school affiliated to the first respondent CBSE Board, wherein the appellant / petitioner was selected and appointed as a Post Graduate Teacher by the appointment order dated 18.06.1990. The relevant portion of the order ie., Clause No.4 has already been quoted.

17. In the said Clause No.4 of the appointment order, the School stated that the teacher would be governed by the Service Conditions for Teachers prescribed by the CBSE and those conditions shall be regulated by the Management of the School as matter of policy and administration and its decision will be final and legally binding.

18. Insofar as the service conditions prescribed by the CBSE is concerned, though CBSE has prescribed a specific condition that insofar as the payment of salary for the teachers is concerned, the school management must be in a position to pay the salary to teachers and other categories of staff regularly at least on par with the corresponding categories in the State Government Schools, which is available in Clause 7 of the Bye-laws. Clause 10 (1)(3) of the bye-laws states that the school should have well defined conditions of service as per the norms of the State or Union Territory Government and should issue appointment letters to the employees at the time of joining of service and should also sign a contract of service.





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fixed by the School at the time of appointment of the teacher. However, it is the grievance of the teacher that subsequently the same has not been revised from time to time on the basis of the enhancement of the salary made by the State Government and in this context, the appellant/petitioner relies upon the Government Letter No.72700/PC-H/98-1 Finance Department (PC) Department dated 21.09.1998, wherein the revision of pay has been made to various categories of teachers including Post Graduate teachers.

22. However, it is the stand of the School that, time and again increments have been given and on comparing with other teachers in the same category working in the school, at least one additional increment has already been given to the appellant/petitioner. Therefore, in all fairness, the appellant / petitioner since was paid higher salary comparing with her peer group ie., the teachers working in the very same school in the Post Graduate teachers category, the said salary fixed to the teacher concerned cannot be said to be a lower salary.

23. However, it is to be noted that in the CBSE Affiliation Regulations, it has been made clear that the school management must have the resources to pay the salary to the teaching and non-teaching staff on par with the teaching and non-teaching staff working in the State Government schools and this has also been incorporated as one of the conditions in the appointment order dated 18.06.1990 under Clause 4. When that being so, the school cannot say that merely by giving



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one increment higher than the other teachers working in the school, it is equal to the salary of the State Government teachers. The salary that has been fixed and being paid to the teachers of the State Government school should have been fixed and paid to all the teachers. However, it is to be noted that, whether in the agreement between the teacher and the school by way of appointment order or a separate agreement, whether that has been agreed upon by the school is also a question.

24. Only in this context, the latest judgment of the Hon'ble Supreme Court in **(2023) 4 S.C.C. 498 St.Mary's Educational Society and Another -Vs- Rajendra Prasad Bhargava and Others** can be pressed into service. In the said case the issue was whether a writ petition filed by a non-teaching staff working in an unaided school affiliated to CBSE would be maintainable.

25. In this context, the Hon'ble Supreme Court, after having exhaustively discussed all these aspects, by taking into account all the earlier judgments, has expressed its view in the following paragraphs.

"52. In the case on hand, the facts are similar. Rule 26(1) of the Affiliation Bye-laws, framed by CBSE, provides that each school affiliated with the Board shall frame Service Rules. Sub-rule (2) of it provides that a service contract will be entered with each employee as per the provision in the Education Act of the State/Union Territory, or as given in Appendix III, if not obligatory as per the State Education Act. These rules also provide procedures for



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appointments, probation, confirmation, recruitment, attendance representations, grant of leave, code of conduct, disciplinary procedure, penalties, etc. The model form of contract of service, to be executed by an employee, given in Appendix III, lays down that the service, under this agreement, will be liable to disciplinary action in accordance with the Rules and Regulations framed by the school from time to time. Only in case where the post is abolished or an employee intends to resign, Rule 31 of the Affiliation Bye-laws of the Board will apply. It may be noted that the above Bye-laws do not provide for any particular procedure for dismissal or removal of a teacher for being incorporated in the contract. Nor does the model form of contract given in Appendix III lay down any particular procedure for that purpose. On the contrary, the disciplinary action is to be taken in accordance with the Rules and Regulations framed by the school from time to time.

53. On a plain reading of these provisions, it becomes clear that the terms and conditions mentioned in the Affiliation Bye-laws may be incorporated in the contract to be entered into between the school and the employee concerned. It does not say that the terms and conditions have any legal force, until and unless they are embodied in an agreement. To put it in other words, the terms and conditions of service mentioned in Chapter VII of the Affiliation Bye-laws have no force of law. They become terms and conditions of service only by virtue of their being incorporated in the contract. Without the contract they have no vitality and can confer no legal rights. The terms and conditions mentioned in the Affiliation Bye-laws have no efficacy, unless they are incorporated in a contract. In the absence of any statutory provisions governing the services of the employees of the school, the service of Respondent 1 was purely contractual. A contract of personal service cannot be enforced specifically. Therefore, Respondent 1 cannot find a cause of action on any breach of the law, but only on the breach of the contract. That being so, the appellant's remedy lies elsewhere and in no case the writ is maintainable.

54. Thus, the aforesaid order passed by this Court makes it very clear that in a case of retirement and in case of termination, no public law element is involved. This Court has held that a writ under Article 226 of the



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Constitution against a private educational institution shall be maintainable only if a public law element is involved and if there is no public law element is involved, no writ lies.

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66. Merely because a writ petition can be maintained against the private individuals discharging the public duties and/or public functions, the same should not be entertained 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 then 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.

67. Our present judgment would remain incomplete if we fail to refer to the decision of this Court in *Ramakrishna Mission v. Kago Kunya* [*Ramakrishna Mission v. Kago Kunya*, (2019) 16 SCC 303]. In the said case this Court considered all its earlier judgments on the issue. The writ petition was not found maintainable against the Mission merely for the reason that it was found running a hospital, thus discharging public functions/public duty. This Court considered the issue in reference to the element of public function which should be akin to the work performed by the State in its sovereign capacity. This Court took the view that every public function/public duty would not make a writ petition to be maintainable against an "authority" or a "person" referred under Article 226 of the Constitution of India unless the functions are such which are akin to the functions of the State or are sovereign in nature."



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26. Ultimately, the Hon'ble Supreme Court has summed up the final conclusion at Para 75, which reads thus,

" **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*



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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."*

27. If we look at the discussion that has been recorded by the Hon'ble Supreme Court, it is made it clear that Rule 26(1) of the Affiliation Bye-laws, framed



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by CBSE, provides that each school affiliated with the Board shall frame Service Rules. Sub-rule (2) of it provides that a service contract will be entered with each employee as per the provision in the Education Act of the State/Union Territory, or as given in Appendix III, if not obligatory as per the State Education Act. It has also been further stated that these rules also provide procedures for appointments, probation, confirmation, recruitment, attendance representations, grant of leave, code of conduct, disciplinary procedure, penalties, etc.

28. The Supreme Court has further stated that it may be noted that the above bye-laws do not provide for any particular procedure for dismissal or removal of a teacher for being incorporated in the contract. Nor does the model form of contract given in Appendix III lay down any particular procedure for that purpose.

29. In Para 53 of the said judgment, the Supreme Court has held that, on a plain reading of these provisions, it becomes clear that the terms and conditions mentioned in the Affiliation Bye-laws may be incorporated in the contract to be entered into between the school and the employee concerned. The Supreme Court has further stated that it does not say that the terms and conditions have any legal force, until and unless they are embodied in an agreement. To put it in other words, the terms and conditions of service mentioned in Chapter VII of the Affiliation Bye-laws have no force of law. They become terms and conditions of service only by virtue of their being incorporated in the contract. Without the contract they have no



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vitality and can confer no legal rights. The terms and conditions mentioned in the Affiliation Bye-laws have no efficacy, unless they are incorporated in a contract. In the absence of any statutory provisions governing the services of the employees of the school, the service of Respondent 1 was purely contractual. A contract of personal service cannot be enforced specifically.

30. By stating this, the Hon'ble Supreme Court has further held in Para 54 of the judgment that, thus the aforesaid order passed by this Court makes it very clear that in a case of retirement and in case of termination, no public law element is involved. This Court has held that a writ under Article 226 of the Constitution against a private educational institution shall be maintainable only if a public law element is involved and if there is no public law element is involved, no writ lies.

31. In consonance with this discussion and what has been held in Paragraph 53, the Supreme Court has ultimately come to the conclusion, where in Paragraphs 75(3) and 75(4) it has been clearly demarcated that, insofar as the service conditions of the teaching and non-teaching staff of a private school affiliated to the CBSE is concerned, whether enforcement of such right accrued on the teacher by virtue of the contract entered into between the school and the teacher concerned whether is possible by invoking Article 226 of the Constitution, the Hon'ble Supreme Court has given the answer in negative.



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32. Ultimately, if at all it is a contractual obligation or conditions imposed in the contract, that can very well be enforced by the aggrieved party by filing a lis before the appropriate forum but not by invoking Article 226 of the Constitution.

33. Therefore, this legal position has been very explicitly and unambiguously made in the said judgment, which is the latest one, which is binding on all parties concerned. Hence, in this context, the submissions made by the learned counsel for the school is to be accepted.

34. Even though the learned counsel for the first respondent Board cited the judgment reported in **(2021) 7 SCC 735 (Jigya Yadav -vs- CBSE and Others)** and his argument is that the CBSE bye-laws is a law to be enforced, the said judgment has not been considered in the subsequent judgment cited supra in **St.Mary's Educational Society and Another -Vs- Rajendra Prasad Bhargava and Others** reported in **(2023) 4 S.C.C. 498**. However, that would not alter the situation.

35. The reason being that, insofar as the bye-laws pertaining to the CBSE examination is concerned, if the bye-laws are violated, it is a public cause or a public duty, therefore, in order to seek for remedy with regard to the alleged violation of the byelaws of the examination is concerned, the aggrieved party can



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very well invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution.

36. However, the same analogy cannot be adopted in case of a service dispute between the teachers and the school is concerned. As far as the teaching and non-teaching staff is concerned, whether the service dispute can be brought under the purview of writ jurisdiction has been completely answered by the Hon'ble Supreme Court in the **St.Mary's** case.

37. If those principles laid down in **St.Mary's** case is applied to the facts of the present case, whether the dispute that has been raised by filing the writ petition by the appellant / teacher is concerned, it relates to the enhancement and fixation of the salary, which is necessarily to be construed only as a service dispute.

38. The issue that there has been a contract between the school and the teacher ie., the second respondent and the petitioner / appellant especially in the context of Clause 4 of the appointment order dated 18.06.1990, whether that can be enforced by the appellant / petitioner / teacher by filing a writ petition is the only question to be answered. This question obviously can be answered by relying upon the latest decision of the Hon'ble Supreme Court in **St.Mary's** case cited supra.



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39. Therefore, our answer to the said question would be that this writ petition filed by the petitioner / appellant is not maintainable before this Court under Article 226 of the Constitution. However, in order to get the remedy for the grievance of fixing the higher salary or other related issues of service, if the teacher feels that it is one of the service conditions agreed upon by the school and as per the contract ie., the appointment order, that can be very well enforced by the teacher before the appropriate forum by filing an appropriate lis to seek for enforcement of the contractual obligations between the parties.

40. Hence, the filing of writ petition before this Court by invoking the writ jurisdiction is thoroughly out of purview, in view of the law having been declared so. Therefore, the approach of the learned Judge, who passed the order which is impugned herein cannot be found fault with and it cannot be said that it is an erroneous approach. With the result, the writ appeal fails and the order impugned is sustained.

41. Before parting with the case, we feel that it is an area where there is no legislation either by the Central Government or the State Government. As far as the subject Education since has been brought under List III of Schedule VII of the Constitution after the amendment and now it has been made in Entry 25 of List III of Schedule VII of the Constitution, in the said subject 'Education', both the



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Parliament as well as the concerned State Legislature are having legislative competence to legislate the law.

42. In this context, it is to be noted that the CBSE has framed Affiliation Byelaws 2018 and notified it on 18.10.2018. Therefore, as on date the said bye-laws alone is governing the field. However, since the legal position having been declared by the Hon'ble Supreme Court, insofar as the service conditions of the staff ie., teaching and non-teaching staff of the CBSE schools are concerned, they still do not have an active legal enactment to enforce their right with regard to service disputes.

43. In this context, Chapter 5 of the 2018 CBSE Regulations deals with the heading 'Staff', wherein Clause 5.2.2 reads thus,

"Teaching and non-teaching staff should be appointed on pay scales and allowances prescribed by the Appropriate Government."

44. The term 'Appropriate Government' has been defined in Clause 1.3.29 of the 2018 Regulations, wherein it is defined that, 'Appropriate Government' means the same as defined in Section 2 of the Right to Education Act. In Section 2(a) of the Right of Children to Free and Compulsory Education Act, 2009, the term 'Appropriate Government' has been defined as follows,



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"2 (a) ?appropriate Government? means?

(i) in relation to a school established, owned or controlled by the Central Government, or the administrator of the Union territory, having no legislature, the Central Government;

(ii) in relation to a school, other than the school referred to in sub-clause (i), established within the territory of?

(A) a State, the State Government;

(B) a Union territory having legislature, the Government of that Union territory;"

45. According to the said definition, if the School is established in a State, the appropriate Government is the State Government. If the School is established in an Union Territory having its legislature, the Government of the Union Territory will be the appropriate Government. Insofar as the schools which are established owned or controlled by the Central Government or Administrator of the Union Territory having no legislature, then for those schools the appropriate Government is the Central Government.

46. Here in the case in hand, though it is a CBSE affiliated school it has been established in the State of Tamil Nadu. Therefore, as per the said definition, the appropriate Government will be State of Tamil Nadu. Hence, as per Clause 5.2.2 the prescription with regard to the fixation of pay shall be made by the State



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Government. However, so far no such prescription has been made to be applied for the teaching and non-teaching staff working in private recognized schools affiliated to CBSE.

47. Equally, it seems that there has been no such legislation or regulation so far has been framed or legislated by the Central Government also in respect of the schools for which the Central Government has been declared as the Appropriate Government.

48. Because of this grey area, where since there has been no suitable legislation made either by the Central Government or by the State Government, this kind of legal fiction has arisen and those issues then and there is settled by the pronouncement of law by declaring so by the higher Courts like the High Courts as well as the Hon'ble Supreme Court, but that cannot be stated to be a permanent solution for the issue.

49. Therefore, at the present juncture, after having gone through this legal position, we deem it fit and appropriate to make a suggestion to the Appropriate Government viz., the Central and State Government represented by respondents 3 and 4 herein who have been subsequently impleaded in this writ appeal, to take up this issue and explore the possibility of making a comprehensive legislation covering all these issues including the service conditions of the teaching and non-teaching



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staff working in private recognized schools affiliated to CBSE like the second respondent school. If such a legislation is made by the respective 'appropriate Government', all this kind of issues time and again coming to the Court of law at least to a considerable extent would be given a quietus. Therefore, our suggestion can be taken into account and accordingly the needful can be undertaken by the appropriate Government in the light of what has been discussed herein above.

50. Even though this Court realizes that it is the prerogative of the legislature or the rule making body to have such a subordinate legislation and to frame a law in a particular fashion, this suggestion we have made only on the basis of the 2018 Byelaws of the CBSE, where it has been mandated that the appropriate Government must frame such regulation / law for governing the service conditions of the teaching and non-teaching staff working in private recognized schools.

51. With these suggestions, the writ appeal stands dismissed. No costs.

(R.S.K.,J..) (K.B.,J.)
07.08.2023

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To

- 1.The Secretary
Regional Educational Officer
Central Board of Secondary Education
Plot No.1630, A, J Block, Anna Nagar West
Chennai 600 040.
- 2.The Management of Bhakthavatsalam Vidyashram
Rep.by its Correspondent, No.496, A1, A2,
Periyar Nagar, Korattur, Chennai 600 080.
- 3.The Secretary to Government
Department of School Education and Literacy
Ministry of Human Resources Development,
C Wing, Shastri Bhavan, Doctor
Rajendra Prasad Road, Rajpath Area
Central Secretariat, New Delhi -110 001.
- 4.The Secretary to Government
Department of School Education
Government of Tamil Nadu
Fort St.George, Chennai.



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R.SURESH KUMAR, J.
and
K.KUMARESH BABU, J.

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07.08.2023