

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

113+231

CWP-6115-2019 (O&M)

Date of Decision : 11.09.2023

Reena Panta

..... Petitioner

Versus

Union of India and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr.Onkar Singh, Advocate
for the petitioner.

Ms. Anita Balyan, Advocate
for respondent No.1-UOI.

Mr.A.D.S. Jattana, Advocate
for respondents No.2 and 3.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of Constitution of India is seeking setting aside of order dated 27.02.2019 (Annexure P-18) whereby her services have been terminated.

2. Counsel for the respondent raised preliminary objection of maintainability. He submits that respondent No.2 is a society registered under Society Registration Act, 1860. The respondent No.2 does not fall within definition of State or its Instrumentality as contemplated under Article 12 of Constitution of India. The respondent-Society is neither getting financial aid from the State nor directly or indirectly controlled or managed by the Government. A Division Bench of this Court in **Rajni Jaiswal vs. School Managing Committee, Army School, Ferozepur Cantt and another, 2007 SCC Online P&H 1472** and Andhra Pradesh High

Court in *Shaheeda Begum vs. Principal Army School Secunderaband and another, 2005 SCC OnLine AP 706* have held that Army Public School run by Army Welfare Society are not instrumentality of State in terms of Article 12 of Constitution of India, thus, writ petition is not maintainable. He further relies upon a three-Judge Bench of Hon'ble Supreme Court in *Executive Committee of Vaish Degree College, Shamli and others vs. Lakshmi Narain and others, (1976)2 SCC 58.*

3. Learned counsel for the petitioner submits that respondent is discharging public function i.e. imparting education, thus, amenable to writ jurisdiction of this Court. Though, the respondent is neither getting financial aid from the State nor controlled/managed by State still it is amenable to writ jurisdiction. In support of his contention, he relies upon judgment of Hon'ble Supreme Court in *Ramesh Ahluwalia vs. State of Punjab and others, 2012 (12) SCC 331*, Madras High Court in *Mrs. Revathi vs. Central Board of Secondary Education and others, Writ Petition No.1422 of 2022, decided on 18.07.2023*, this High Court in *Surinder Singh and others vs. Union of India and others, 2016 SCC OnLine P&H 14737* and Delhi High Court in *Army Welfare Education Society and anr. vs. Manju Nautiyal and anr., 2015 SCC OnLine Del 13072*

4. I have heard the learned counsel for the parties and perused the record.

5. A Division Bench of this Court in *Rajni Jaiswal's case (supra)* noticing judgment of a Division Bench of Jammu and Kashmir High Court in *Asha Khosa vs. Chairman Army Public School in W.P. (Service) No.1415 of 1996, decided on 17.02.1997* has held that writ

petition is not maintainable against Army Public School. The relevant extracts of the order read as :

3. In support of the aforementioned contention, learned counsel for the respondent has cited a Division Bench judgment of Jammu and Kashmir High Court in the case of Asha Khosa v. Chairman Army Public School in W.P. (Service) No. 1415 of 1996 decided on 17.2.1997. The issue has been decided that the Army Welfare Education Society running the Army School is not amenable to writ jurisdiction under Article 226 of the Constitution. Against the aforementioned view of the Division Bench of Jammu and Kashmir High Court, Special Leave Petition No. 6482(c) of 1997 was filed and the same has been dismissed by Hon'ble the Supreme Court vide order dated 31.3.1997 (R-2). The Division Bench of this Court has also followed the aforementioned view in the case of Upma Kalia v. Army Public School, Jalandhar, (CWP No. 15202 of 2002) decided on 26.8.2003 and in the case of Vinod Kumar v. Ministry of Defence, (CWP No. 17615 of 2003) decided on 18.11.2004.

4. In view of the above, we dismiss the writ petition on account of non-maintainability. However, the petitioner shall be at liberty to avail of any other remedy in accordance with law, for the same cause of action, if so advised.

5. Petition dismissed

6. A three-Judge Bench of Hon'ble Supreme Court in **Lakshmi Narain's case (supra)** has drawn distinction between an entity created by statute and an entity governed by provisions of the statute. The Court has held that a society constituted under Society Registration Act, 1860 or a company incorporated under the Companies Act, 1956 cannot be called as a

statutory body. The relevant extracts of the judgment read as :

10. We would first deal with the important question, which has been the sheet-anchor of the arguments of the learned Counsel for the respondent as also the main basis of the judgment of the Full Bench of the Allahabad High Court, as to whether or not the appellant Executive Committee can be said to be a statutory body in the circumstances of the present case. It seems to us that before an institution can be a statutory body it must be created by or under the statute and owe its existence to a statute. This must be the primary thing which has got to be established. Here a distinction must be made between an institution which is not created by or under a statute but is governed by certain statutory provisions for the proper maintenance and administration of the institution. There have been a number of institutions which though not created by or under any statute have adopted certain statutory provisions, but that by itself is not, in our opinion, sufficient to clothe the institution with a statutory character. In Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi [(1975) 1 SCC 421 : 1975 SCC (L&S) 101 : AIR 1975 SC 1331, 1339] this Court clearly pointed out as to what constitutes a statutory body. In this connection my Lord A.N. Ray, C.J., observed as follows : [SCC p. 435 : SCC (L&S) p. 115, para 25]

“A company incorporated under the Companies Act is not created by the Companies Act but comes into existence in accordance with the provisions of the Act. It is not a statutory body because it is not created by the statute. It is a body created in accordance with the provisions of the statute.”

It is, therefore, clear that there is a well marked distinction between a body which is created by the statute and a body which after having come into existence is governed in accordance with the provisions of the statute. In other words the position seems to be that the institution concerned must owe its very existence to a statute which would be the fountainhead of its powers. The question in such cases to be asked is, if there is no statute would the institution have any legal existence. If the answer is in the negative, then undoubtedly it is a statutory body, but if the institution has a separate existence of its own without any reference to the statute concerned but is merely governed by the statutory provisions it cannot be said to be a statutory body. The High Court, in our opinion was in error in holding that merely because the Executive Committee followed certain statutory provisions of the University Act or the statutes made thereunder it must be deemed to be a statutory body. In fact the Full Bench of the High Court relied on three circumstances in order to hold that the Executive Committee was a statutory body viz. (i) that it was affiliated to the Agra University which was established by the statute; (ii) that there were certain mandatory provisions in the Agra University Act which were binding on the Executive Committee; and (iii) that the Executive Committee was governed by the statutes framed by the Agra University. In our opinion, none of these factors would be sufficient to alter the character and nature of the Executive Committee and convert it into a full-fledged statutory body. To begin with the Executive Committee had an independent status having been registered under the Societies Registration Act, 1860 and was a self-governed or an autonomous body. It was affiliated to the Agra University merely for

the sake of convenience and mainly for the purpose that the courses of studies prevalent in the college may be recognised by the university.

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14. Thus in view of the decisions of this Court regarding the circumstances under which the institution can be treated as a statutory body we are unable to agree with the view taken by the Allahabad High Court that the Executive Committee was a statutory body merely because it was affiliated to the university or was regulated by the provisions of the University Act or the statutes made thereunder. We accordingly hold that the decision of the Full Bench of the Allahabad High Court on this point is legally erroneous and must be overruled.

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16. To the same effect is the decision of this Court in Bank of Baroda v. Jewan Lal Mehrotra [(1970) 3 SCC 677 : (1970) 2 LLJ 54, 55] where this Court observed as follows : [SCC p. 678, para 3]

“The law as settled by this Court is that no declaration to enforce a contract of personal service will be normally granted. The well recognised exceptions to this rule are (1) where a public servant has been dismissed from service in contravention of Article 311; (2) where reinstatement is sought of a dismissed worker under the industrial law by labour or Industrial Tribunals; (3) where a statutory body has acted in breach of a mandatory obligation imposed by statute;”

7. A two-Judge Bench of Hon'ble Supreme Court in **St. Mary's Education Society and another vs. Rajendra Prasad Bhargava and others, (2023) 4 SCC 498**, while noticing its plethora of judgments has held

that writ petition under Article 226 of Constitution of India is maintainable against a private person or body, however, writ is not maintainable if action of the private body does not involve public law. Issues arising out of a contract between an employee and private body like termination, promotion or remuneration do not involve public law, thus, writ against order of termination is not maintainable. The Court has discussed at length question of public and private law, maintainability of writ against private body. The relevant extracts of the judgment read as :

2. In the present appeal, two pivotal issues fall for consideration of this Court:

2.1.(a) Whether a writ petition under Article 226 of the Constitution of India is maintainable against a private unaided minority institution?

2.2.(b) Whether a service dispute in the private realm involving a private educational institution and its employee can be adjudicated in a writ petition filed under Article 226 of the Constitution?

3. In other words, even if a body performing public duty is amenable to writ jurisdiction, are all its decisions subject to judicial review or only those decisions which have public element therein can be judicially reviewed under the writ jurisdiction?

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35. Thus, where a teacher or non-teaching staff challenges the action of Committee of Management that it has violated the terms of contract or the rules of the Affiliation Bye-laws, the appropriate remedy of such teacher or employee is to approach CBSE or to take such other legal remedy available under law. It is open to CBSE to take appropriate action against the Committee of Management of the institution for withdrawal of recognition in case it finds that the

Committee of Management has not performed its duties in accordance with the Affiliation Bye-laws.

36. *It needs no elaboration to state that a school affiliated to CBSE which is unaided is not a State within Article 12 of the Constitution of India [see Satimbla Sharma v. St Paul's Senior Secondary School [Satimbla Sharma v. St Paul's Senior Secondary School, (2011) 13 SCC 760 : (2012) 2 SCC (L&S) 75]]. Nevertheless the school discharges a public duty of imparting education which is a fundamental right of the citizen [see K. Krishnamacharyulu v. Sri Venkateswara Hindu College of Engg. [K. Krishnamacharyulu v. Sri Venkateswara Hindu College of Engg., (1997) 3 SCC 571 : 1997 SCC (L&S) 841]]. The school affiliated to CBSE is therefore an “authority” amenable to the jurisdiction under Article 226 of the Constitution of India[see Binny Ltd. v. V. Sadasivan [Binny Ltd. v. V. Sadasivan, (2005) 6 SCC 657 : 2005 SCC (L&S) 881]]. **However, a judicial review of the action challenged by a party can be had by resort to the writ jurisdiction only if there is a public law element and not to enforce a contract of personal service. A contract of personal service includes all matters relating to the service of the employee — confirmation, suspension, transfer, termination, etc. [see Apollo Tyres Ltd. v. C.P. Sebastian [Apollo Tyres Ltd. v. C.P. Sebastian, (2009) 14 SCC 360 : (2009) 5 SCC (Civ) 358 : (2010) 1 SCC (L&S) 359]].***

37. *This Court in K.K. Saksena v. International Commission on Irrigation & Drainage [K.K. Saksena v. International Commission on Irrigation & Drainage, (2015) 4 SCC 670 : (2015) 2 SCC (Civ) 654 : (2015) 2 SCC (L&S) 119] , after an exhaustive review of its earlier decisions on the subject, held as follows : (SCC pp. 692 & 696, paras 43 & 52)*

“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.

52. It is trite that contract of personal service cannot be enforced. There are three exceptions to this rule, namely:

- (i) when the employee is a public servant working under the Union of India or State;*
- (ii) when such an employee is employed by an authority/body which is a State within the meaning of Article 12 of the Constitution of India; and*

(iii) when such an employee is “workmen” within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 and raises a dispute regarding his termination by invoking the machinery under the said Act.

In the first two cases, the employment ceases to have private law character and “status” to such an employment is attached. In the third category of cases, it is the Industrial Disputes Act which confers jurisdiction on the Labour Court/Industrial Tribunal to grant reinstatement in case termination is found to be illegal.”

38. *The following decisions have been adverted to in K.K. Saksena [K.K. Saksena v. International Commission on Irrigation & Drainage, (2015) 4 SCC 670 : (2015) 2 SCC (Civ) 654 : (2015) 2 SCC (L&S) 119] :*

1. Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani [Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani, (1989) 2 SCC 691 : AIR 1989 SC 1607] ,

2. G. Bassi Reddy v. International Crops Research Institute [G. Bassi Reddy v. International Crops Research Institute, (2003) 4 SCC 225] ,

3. Praga Tools Corpn. v. C.A. Imanual [Praga Tools Corpn. v. C.A. Imanual, (1969) 1 SCC 585] ,

4. Federal Bank Ltd. v. Sagar Thomas [Federal Bank Ltd. v. Sagar Thomas, (2003) 10 SCC 733] .

39. *This Court in Janet Jeyapaul v. SRM University [Janet Jeyapaul v. SRM University, (2015) 16 SCC 530 : (2015) 13 Scale 622 : 8 SCEC 68] , held that when a*

private body exercises its public functions even if it is not a State, the aggrieved person has a remedy, not only under the ordinary law, but also by way of a writ petition under Article 226 of the Constitution. In Binny case [Binny Ltd. v. V. Sadasivan, (2005) 6 SCC 657 : 2005 SCC (L&S) 881] , this Court held that Article 226 of the Constitution is couched in such a way that a writ of mandamus could be issued even against a private authority. However, such private authority must be discharging a public function and that the decision sought to be corrected or enforced must be in the discharge of public function.

40. *Para 11 of the judgment in Binny [Binny Ltd. v. V. Sadasivan, (2005) 6 SCC 657 : 2005 SCC (L&S) 881] is reproduced below : (SCC pp. 665-66)*

“11. Judicial review is designed to prevent the cases of abuse of power and neglect of duty by public authorities. However, under our Constitution, Article 226 is couched in such a way that a writ of mandamus could be issued even against a private authority. However, such private authority must be discharging a public function and that the decision sought to be corrected or enforced must be in discharge of a public function. The role of the State expanded enormously and attempts have been made to create various agencies to perform the governmental functions. Several corporations and companies have also been formed by the Government to run industries and to carry on trading activities. These have come to be known as public sector undertakings. However, in the interpretation given to Article 12 of the Constitution, this Court took the view that many of

these companies and corporations could come within the sweep of Article 12 of the Constitution. At the same time, there are private bodies also which may be discharging public functions. It is difficult to draw a line between public functions and private functions when it is 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.”

(emphasis supplied)

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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 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.

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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. In the present case, concededly the respondent society has been created under Society Registration Act. The respondent body is neither directly nor indirectly controlled by Government. The society is free to make rules with respect to appointment, tenure and termination of its employees. The society is not bound to adopt rules and regulations made by State Government or Central Government with respect to its employees. The respondent-Society is not funded by State. The respondent-society is imparting education which is a public function, thus, it is amenable to writ jurisdiction of this Court. The petitioner was appointed on the basis of a contract executed between the parties. The petitioner is seeking setting aside of her termination from the post of Principal.

9. The petitioner is assailing order dated 27.02.2019 whereby petitioner has been terminated during probation period. Law enunciated by

Hon'ble Supreme Court in **St. Mary's Education Society's case (supra)** is squarely applicable to the present case and as per said judgment, the writ petition is not maintainable.

10. In the wake of above discussion and findings, the present petition stands dismissed for the want of maintainability. The petitioner is at liberty to avail remedy as permissible by law.

11. Pending applications, if any, stand disposed of.

11.09.2023
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(JAGMOHAN BANSAL)
JUDGE

Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>