

15.05.2024
Sl. No.05
Suman
Ct.No.17

WPA 9235 of 2024

Dr. Amitra Sudan Chakrabortty
Vs.
The State of West Bengal & Ors.

Mr. Nilanjan Bhattacharjee
Mr. Jyoti Prakash Chatterjee
..for the petitioner

Mr. Avinash Kankani
..for respondent nos. 3 and 4.

Mr. Swapan Kumar Datta, AGP
Mr. Dipankar Das Gupta
...for the State

Mr. Jasobanta Rakshit
..for respondent no.11

Mr. Anil Kumar Gupta
..for UGC

Mr. Souvik Nandy
Mr. Mani Shankar Chattopadhyay
..for respondent nos. 12 to 15

The petitioner challenges his termination order dated February 9, 2024 issued by the Registrar of Seacom Skills University. At the relevant point of time, the petitioner was serving as Head of the Department of Law of the university.

It has been submitted on behalf of the petitioner that the termination of the petitioner is illegal since the same has been passed without any valid ground.

Mr. Nilanjan Bhattacharjee, learned advocate appearing for the petitioner has drawn attention of this Court to Section 28 of Seacom Skills University's Act, 2014. He argues that the First University's Statute providing the terms and conditions of service of the employees of the university has not yet been framed.

Mr. Nandy, learned advocate appearing for the university raises the issue of maintainability of this writ petition. He has placed reliance upon the judgment reported at **(2023) 4 Supreme Court Cases 498 (St. Mary's Education Society versus Rajendra Prasad Bhargava)**.

The relevant part of **St. Mary's Education Society** (supra) is quoted below:-

"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.”

It appears that the petitioner was appointed by a letter dated September 26, 2019. The appointment letter suggests that the appointment of the petitioner was contractual in nature and his service was terminable giving one-month’s notice.

Admittedly, Seacom Skills University is a private university and the First University’s Statute has not yet been framed in terms of Section 28 of the constituting Act of 2014.

In the aforesaid facts, it cannot be said that service condition of the petitioner was controlled by any statutory provision. Therefore, the petitioner cannot maintain this writ petition in view of the ratio laid down in **St. Mary’s Education Society** (supra).

Accordingly, this writ petition is not entertained. It is, however, expected that the university shall take necessary steps as expeditiously as possible to frame the First University's Statute in terms of Section 28 of Seacom Skills University's Act, 2014.

Needless to mention that dismissal of the writ petition shall not prevent the petitioner from approaching the proper forum in accordance with law.

Accordingly, **WPA 9235 of 2024** is dismissed.

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

(Kausik Chanda, J.)