

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

BEFORE: -

The Hon'ble Justice Soumen Sen

And

The Hon'ble Justice Uday Kumar

FMA 763 of 2022

CAN 1 2022

Pinaki Dhar

Vs.

State of West Bengal & Ors.

For the Petitioner : Mr. Firdous Samim, Adv.
Mr. Satyam Mukherjee, Adv.,
Ms. Gopa Biswas, Adv.,
Ms. Sampriti Saha, Adv.,
Ms. Mohana Das, Adv.

For the Respondent Nos.6&7: Mr. Shuvro Prokash Lahiri, Adv.,
Ms. Tithi Mazumder, Adv.,

For the State : Mr. K.M Hossain, Adv.,
Mr. Tapas Kr. Mandal, Adv.

Hearing concluded on : 16th January, 2024

Judgment on : 27th March, 2024

Soumen Sen, J.:

1. The judgment under appeal is arising out of a decision dated 6th April, 2022 rejecting the contention of the appellant that the respondent no.6, Calcutta Institute of Technology is amenable to writ jurisdiction.

2. The Umbra and Penumbra of Private Law and Public Law and the thin line existing in between has come up for consideration in this appeal.
3. The learned Single Judge has dismissed the writ petition on the ground that the Calcutta Institute of Technology is not amenable to writ jurisdiction as the dispute is essentially a private dispute between the Institute and the Professor inasmuch as CIT is a private, self-financed un-aided institution.
4. Before I discuss the changing horizon of the public law it is necessary to discuss in nature of the dispute and the character of CIT.
5. The writ petitioner filed a writ application, inter alia, challenging the notice of discharge being memo bearing no. F11/Prin/2018-19/11 dated 13th February, 2019 issued by the Principal-in-charge of Calcutta Institute of Technology (in short 'CIT') a unit of Uluberia Rural Society for Care of Health and Research Development (in short 'URSCHARD').
6. The grievance of the petitioner is that the Principal-in-charge of CIT did not allow the writ petitioner to resume his service upon completion of his CSIR SRF fellowship of Jadavpur University. The petitioner claims that he was offered the position of an Assistant Professor in Electrical Engineering Department at CIT vide a letter dated 15th July, 2014 and pursuant thereto he joined the said respondent institution as Assistant Professor on one year probation in Electrical Engineering Department.
7. Subsequently, on 25th May, 2015 and 3rd December, 2016 satisfactory experience certificate was issued by the Principal of CIT in favour of

writ petitioner and thereafter with a view to achieving degree of Doctorate the writ petitioner pursued Ph.D at Jadavpur University upon obtaining a no objection certificate from the Principal of the institute on 21st November, 2017. This was followed by another no objection certificate dated 20th February, 2018 that would enable the writ petitioner to attend the interview and continue if selected for SRF conducted by CSIR, New Delhi.

8. The Jadavpur University subsequently issued a notice on 11th May, 2018 in connection with registration of the writ petitioner for his Ph.D course and on being informed the Principal-in-charge of CIT issued a further no objection certificate on 13th June, 2018 allowing the writ petitioner to complete his Ph.D registration process. Thereafter the writ petitioner applied for release on lien for pursuing Ph.D at Jadavpur University on 21st June, 2018. However, upon receiving no reply another mail was made through registered mail address of the respondent on 12th July, 2018.
9. The writ petitioner joined CSIR SRF scholar at Jadavpur University Power Engineering Department for pursuing Ph.D. On 16th July, 2018 at around 05:12 pm writ petitioner received one mail from the Principal-in-charge, CIT rejecting his request for lien and in the said communication it has been stated that previously issued “no objection certificate” was issued merely for registration and pursuing Ph.D so that he can continue research as a part time student. The writ

petitioner thereafter made a representation for reconsideration of his issue of lien through electronic mail and also approached the Chairman, All India Council for Technical Education for redressal of his grievance. However, such representation did not elicit any reply and ultimately on 13th February, 2019 the writ petitioner was discharged from his duties with immediate effect by the CIT. Thereafter the writ petitioner made a representation on 13th June, 2021 for reconsideration of the said decision and resumption of his normal duties, however the said representation was rejected by CIT in its communication dated 30th July, 2021. The writ petitioner has stated in the writ petition that during the tenure from 16th July, 2018 till 31st July, 2021 the writ petitioner never drew any remuneration from CIT and only received the stipulated amount of fellowship as fixed by Government of India for CSIR SRF from time to time.

10. The writ petitioner sought for cancellation of these two letters in the writ petition.
11. In the writ proceeding CIT filed an affidavit in which a specific plea was taken with regard to maintainability of the writ petition. CIT has also dealt with the matter on merits.
12. The learned Single Judge decided the issue of maintainability of the writ petition against the appellant/writ petitioner and hence this appeal.

13. In the appeal a supplementary affidavit on behalf of the appellant was filed disclosing the following documents:

- i) The application under the RTI Act, 2005 dated 15th April, 2023 soliciting information regarding the sanction received from AICTE by CIT under the Pradhan Mantri Kaushal Vikash Yojana for Technical Institution. (PMKVY) for 2016-17, 2017-18, 2018-19.
- ii) Reply received from the Skilled Development Cell from AICTE dated 21st April, 2023.
- iii) Sanctioned Orders dated 10th February, 2017, 18th August, 2017 and 31st August, 2018 disclosing release of grant in aid to the respondent institute in three instalments subject to the conditions mentioned in the said sanctioned orders.
- iv) Photocopy and the utilisation certificate issued by CIT dated 31st July, 2017, 3rd May, 2018 and 22nd June, 2022.
- v) Approval letter issued by AICTE dated 14th May, 2004 granting approval for establishment of CIT to conduct Under Graduate Degree Level Course in Degree Engineering for the Academic year 2004-05.
- vi) A letter dated 22nd July, 2010 issued by the Inspector of Colleges, West Bengal University of Technology addressed to Principal/ Director of all affiliated colleges.
- vii) Notification issued by AICTE on 3rd May, 2000 in relation to the Pay scale and service conditions of teacher etc. in Private Self

Financing Degree Level Technical Institution and 10th December, 1999 with regard to the Pay scale and service condition of Teachers of Technical Institution (Diploma).

viii) Regulation of University Grants Commission (UGC) issued by the Secretary under F.No.14-9/2013 (CPP-II) dated 28th February, 2014.

ix) Resolution passed by the Standing Complaints Scrutiny Committee (SCSC) of AICTE in disposing of the complaint regarding non-payment of the dearness allowance and arrear salary.

14. The aforesaid documents have been disclosed in the appeal for the first time in order to establish that the respondent no. 6 namely, Calcutta Institute of Technology is an authority amenable to writ jurisdiction under Article 226 of the Constitution of India.

15. The institute has raised objection with regard to the disclosure of the said documents for the first time at the appellate stage without satisfying and/or fulfilling the conditions contemplated under Order 41 Rule 3 of the CPC. Nonetheless the Institute filed an affidavit to demonstrate that the said documents would also not justify the filing of the writ as the said institute is not amenable to the writ jurisdiction. In the affidavit in opposition to the writ petition as well as the affidavit in opposition to the supplementary affidavit the institute has disclosed the

formation constitution and function of the institute to show that the said institute is not amenable to the writ jurisdiction.

16. The grounds on which the institute has relied to demonstrate that it is not amenable to the writ jurisdiction are summarised below:

- a) One Ulubaria Rural Society for Care and Health and Research Development (hereinafter referred to as ‘the Society’) is a registered society of which the respondent no.6 is a limb. The society is the parent body of the institute. The institute is a purely private, unaided, non-government self financed Engineering College which generates its own income and revenue and out of such fund bear all expenses.
- b) The Approved Process Handbook of 2021-22 issued by the AICTE defines “government aided institution” under Clause 32 as a “technical institution that meets 50 per cent or more of its recurring expenditure out of the grant receipt from the Government or Government Organisation”. A “Government Institution has been defined under Clause 33 as a “Technical Institution” established and/or duly maintained by the Government.

A “self financing institution” has been defined in Clause 51 as an institution started by a trust/society/Section 8 Company and does not receive grant/fund from Central/State Government/Union Territory for meeting its recurring expenditure. Society is defined in

Clause 52 as a society registered under the Societies Registration Act, 1890.

17. The list published by AICTE on 21st June, 2021 describes the institute as private self financing. A further list of the West Bengal State Council of Technical and Vocational Education and Skilled Development further describes the respondent institution as self-financed. The State respondent in its affidavit in opposition has admitted that the respondent institute is a private self financing technical institution and the said institute has its own rules and regulations for management of its affairs and has never received any grant or finance assistance from the State Government.
18. The State respondents before the learned Single Judge as well as in this appeal has reiterated its stand and submitted that the institute is a private college and is not amenable to the writ jurisdiction.
19. The appellant by disclosing the documents in the supplementary affidavit made an attempt to establish that the CIT has received aids and grants under the PMKVY-T for 3 financial years. The approval letter issued by the AICTE on 14th May, 2004 and the subsequent letter dated 22nd July, 2010 by the Inspector of Colleges, West Bengal University of Technology would show that the institute is required to act in accordance with Clause 8 of the First Regulation to Affiliation dated 27th December, 2002 which would further go to show that the actions taken by the respondent institute being an affiliated college under the

WBUT were to be in accordance with Rules and Regulations of the existing parental affiliation including service condition and career advancement scheme guidelines. In referring to the notification on 3rd May, 2000 issued by AICTE, it is now being argued that AICTE recommended the pay scales and service conditions of teachers in Private Self Financed Degree Level Technology Institutions in the country and all the technical institutions have been requested to implement it. This notification according to writ petitions would further go to show deep and pervasive control of the Government of India and State over the service condition of the faculty involved in the said concerned institute. The Regulation issued by UGC dated 28th February, 2014 has been relied upon to show that in terms of Clause 1.2 all colleges offering technical education and seeking affiliation or already affiliated are required to follow such regulations.

20. The writ petitioner has relied upon the resolutions passed by SCSC on 13th and 15th November, 2018 to show that some other existing faculty members at the relevant point of time approached the SCSC of AICTE complaining non-disbursement of dearness allowance and arrear salary as per the existing AICTE norms in the year 2019.
21. The traditional approach of source of legal authority exercised by a public authority over a period of time is added with the nature of function of the authority. The “source of power” approach is now considered in addition to the functionality test whereby the nature of

function of an authority is also considered to determine its susceptibility to writ jurisdiction. The characteristics of the function being performed is a relevant consideration in applying the public law remedy. The public function approach has been applied for judicial review claim to the lawfulness of a decision, action or failure to act in connection with exercise of a public function. It thus, extends to authorities who are primarily non-statutory bodies but are discharging public function and for that purpose the term “public” is usually taken as synonym for “governmental”. They would have been otherwise excluded from the court’s judicial review supervisory jurisdiction if only traditional “source of power” approach were applied.

22. In the early stages of development of law revolving around the interpretation of the term “other authorities” in Article 12 would show that the courts have interpreted the word ‘authority’ to include all bodies created by a statute on which power are conferred to carry out governmental or quasi governmental functions and “other authorities” wide enough to include within it every authority. If the provision in no uncertain terms show that the “voice is that of the governments and the hands are also of the government”, such “other authorities” were held to be amenable to writ jurisdiction”. The source of power and “the voice and hands” test have formed the basis of deciding enforceability of mandamus against such other authority (see. **Rajasthan State**

***Electricity Board v. Mohan Lal*, AIR 1967 SC 1857; *Sukhdev Singh v. Bhagatram*, 1975(1) SCC 421).**

23. In ***Sukhdev Singh v. Bhagatram*** (*supra*) Justice Mathew evolved “the instrumentality test” and proceed to enumerate the following illustrative test which is relevant even today:

i. A finding of State financial support plus an unusual degree of control over the management and policies might lead one to characterise an operation as State action. **(The control test)**

ii. Another factor which might be considered is whether the operation is an important public function. If a given function is of such public importance and so closely related to governmental functions as to be classified as a governmental agency, then even the presence or absence of State financial aid might be irrelevant in making a finding of State action. **(The public function test)**

iii. The State may aid a private operation in various ways other than by direct financial assistance. It may give the organisation the power of eminent domain, it may grant tax exemptions, or it may give it a monopolistic status for certain purposes. All these are relevant in making an assessment whether the operation is private or savours of State action.

24. A writ against a Private Education Institution was considered in ***Executive Committee of Vaish Degree College, Shamli and Ors. Vs. Lakshmi Narain and Ors.*** reported in **AIR 1976 SC 888** which was

followed in ***Vaish Degree College v. Lakshmi Narain***, AIR 1976 SC 1073 in these two decisions of the Hon'ble Supreme Court it has been held that a college, even if it is registered under the Societies Registration Act or affiliated to University would not be a statutory body.

25. A writ against the Private Education Institution would lie only if it can be regarded as a statutory body and as to when a body can be regarded as a statutory one has been explained in paragraph 9 of ***Vaish Degree College*** (*supra*) according to which if an institution owes its existence to a statute it would be a statutory body but if after coming into existence it is governed in accordance with the provisions of the statute the position would be different. It is clearly stated in the said decision that 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 sufficient to clothe the institution with a statutory character. The question in such cases to be asked is, if there is no statute would the institution have any legal existence. If the answer 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. Merely because the institution is governed by certain statutory provisions for the proper maintenance and administration of the institution it would

not be considered to be a statutory body. On such reasoning, the Executive Committee of Vaish Degree College registered under the Registration of Co-operative Societies Act and affiliated to the Agra University (and subsequent to Meerut University) was held as not a statutory body and the State or an authority within the meaning of Article 12 of the Constitution of India.

26. However, the situation would be different where an institute is receiving government aid and the rules governing aid very often required approval of the statutory authority especially in matters relating to termination of services of the concerned employees. In such situation the challenge to the termination order of the statutory authority is amenable to writ jurisdiction as held in ***Tikaram Vs. Mundikota Shikshan Prasarak Mandal and Ors.***, reported in **AIR 1984 SC 1621**.
27. In ***Pradeep Kumar Biswas & Ors. Vs. Indian Institute of Chemical Biology & Ors.***, 2002 (5) SCC 111 the Constitution Bench in upholding the contention that the Council of Scientific and Industrial Research (CSIR) which was a society under the Societies Registration Act, was not a state on the reasoning that if the body is financially, functionally and administratively dominated by or under the control of the government and such control must be particular to the body in question and must be pervasive then such body is a 'state' within Article 12 on the other hand, when the control is merely regulatory

whether under statute or otherwise it would not serve to make the body a 'state'.

28. A private educational institution, even if it is recognized, by or affiliated to, a university, cannot be regarded as an instrumentality of the government for the purpose of Article 12. Recognition is only for the purpose of conforming to the standards laid down by the State. The affiliation is with regard to syllabi in the course of study (see. ***Unni Krishnan, J.P. & Ors. V. State of Andhra Pradesh & Ors.***, reported in **AIR 1993 SC 2178 : (1993) 1 SCC 645**)
29. The status of a "deemed university" engaged, in imparting education in higher studies was held to be a State in ***Janet Jeyapaul v. SRM University & Ors.***, reported in **AIR 2016 SC 73** on the ground that the said University was discharging a public function by way of imparting education and the SRM was notified as a "deemed university" by the Central Government under Section 3 of the UGC Act by reason whereof all the provisions of the UGC Act were now applicable to it.
30. An unaided minority institution affiliated to the CBSC cannot be termed as a State and in view thereof employees of such schools cannot invoke Article 226 in respect of matters relating to service where such contracts not governed or controlled by statutory provisions is the view expressed in a recent judgment by the Hon'ble Supreme Court in ***St. Mary's Education Society & Anr. v. Rajendra Prasad Bhargava & Ors.***, reported in **2023(4) SCC 498**. In other words, where the service

condition are not backed by any statutory provision and are solely governed by the terms of the contract the said body is not amenable to the writ jurisdiction is the view expressed in the said judgment. The said judgment has considered almost all the cases that have been relied upon on behalf of the appellant in the appeal. In fact, the appellant has relied much on ***Marwari Balika Vidhyalaya v. Asha Srivastava; 2020 (14) SCC 449*** the school was receiving grant-in-aid to the extent of dearness allowance and the appointment and the removal of the staff is required to be approved by the District Inspector of the Schools (Primary Education) and if any action is taken dehors such mandatory provision the same could not come within the realm of private element.

31. In ***Ramkrishna Mission & Anr. v. Kago Kunya & Ors.***, reported in **2019 (6) SCC 303** the writ petition was not found maintainable against the Mission merely for the reason that it was found running a hospital thus, discharging public function/public duty. The Hon'ble Supreme Court was of the view that every public functions/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.
32. The decision in ***Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani*** reported at **1989(2) SCC 691; AIR 1989 SC 1607** was also considered

in the said decision and was specifically considered in paragraph 20 of the said judgment, the relevant observations in this regard are:

“A writ petition was instituted before the High Court for the enforcement of the right of the teachers to receive their salaries and terminal benefits in accordance with the governing provisions. In that context, this Court dealt with the issue as to whether the management of the college was amenable to the writ jurisdiction. A number of circumstances weighed in the ultimate decision of this Court, including the following:

20.1. The trust was managing an affiliated college.

20.2. The college was in receipt of government aid.

20.3. The aid of the Government played a major role in the control, management and work of the educational institution.

20.4. Aided institutions, in a similar manner as government institutions, discharge a public function of imparting education to students.

20.5. All aided institutions are governed by the Rules and Regulations of the affiliating University.

20.6. Their activities are closely supervised by the University.

20.7. Employment in such institutions is hence, not devoid of a public character and is governed by the decisions taken by the University which are binding on the management.

It was in the above circumstances that this Court came to the conclusion that the service conditions of the academic staff do

not partake of a private character, but are governed by a right-duty relationship between the staff and the management. A breach of the duty, it was held, would be amenable to the remedy of a writ of mandamus”.

33. In ***Andi Mukta (supra)*** the Hon’ble Supreme Court in paragraph 15 has stated that there are two exceptions to the principles to be considered in issuing the writ of mandamus: First, if the rights are purely of a private character and second, if the management of the college is purely a private body with no public duty.
34. In ***Ramkrishna Mission (supra)*** the Hon’ble Supreme Court relied upon the decision in ***Federal Bank Ltd. Vs. Sagar Thomas and Ors.***, reported in **2003 (10) SCC 733** in which the Hon’ble Supreme Court provided the classification of entities against whom a writ petition may be maintainable. The entities are mentioned in paragraph 18 of the said judgment. The classification of entities so enumerate are:

“18. From the decisions referred to above, the position that emerges is that a writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State (Government); (ii) an authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature; and (viii) a person or a body under liability to discharge any function under any statute, to compel it to perform such a statutory function.”

35. In **Federal Bank** (supra) the service of the employee of the bank was terminated. This action of the bank was challenged in a writ petition under Article 226 of the Constitution of India. In that context at paragraph 33 it was, *inter alia*, observed that “merely regulatory provisions to ensure such banking activity carried on by private bodies work within a disciplines, do not confer any such status upon the company nor put any such obligation upon it which may be enforced through issue of a writ under Article 226 of the Constitution of India. The respondent is not trying to enforce any statutory duty on the part of the Bank”.
36. The sole basis on which the writ application stands is that CIT is imparting education which amount to a public function, is clearly not acceptable in view of the decision in **Ramkrishna Mission** (supra) and **St. Mary’s Education Society** (supra).
37. Moreover, the documents disclosed by the parties would show that the institute is a private self financed institution without any State control and without the benefit of any financial assistance of State. As rightly observed by the learned Single Judge the imparting of technical education cannot by itself “transform a documented private entity to a public authority”. Merely because provisions of certain act is applicable to the institute or there are certain regulatory measures the adherence of which is required for its function and recognition of its course does not transform the character of the institute and makes it a “State” or

“other authority” so as to attract the writ jurisdiction. Any other interpretation would mean that each and every institute, private school and college which are neither established by or under a statute would be amenable to the writ jurisdiction. Unlike, ***Marwari Ballika Vidyalaya*** (supra) it is purely a self financed Institute and the grants to which reference was made in the supplementary affidavit are purely for the purpose of running certain courses under a scheme. The Institute does not require the approval from the State for appointment or dismissal or discharge of its employees. The service contracts are non-statutory and purely private in nature. The essence of public element to the discharging of public functions and duties akin to the sovereign functions discharged by the State is significantly absent. The challenge in the writ petition is arising out of a contract of employment between the petitioner and the Institute. The petitioner is not trying to enforce any statutory duty on the part of the CIT. However, remedies are available to the petitioner for enforcing its rights. In view of the fact that there is absence of any public element in the challenge sought to be urged, in the facts of the case, in our view writ petition is not maintainable.

38. The learned Counsel for the appellant has argued that the reach of judicial review has been expanded by the Courts over the last few decades and the decisions cited by the learned Counsel would show that a number of propositions and principles of general application can

be applied in the given facts and circumstances of the case for the purpose of invoking the writ jurisdiction.

39. The learned Counsel has submitted that there may be few decisions which may not show an entirely coherent pattern but by and large in the fact situation the principles enunciated by the Court in respect of the dispute under consideration the public law remedy is applicable.

40. It is suffice at this stage to say that function-based approach has enabled the courts to articulate more exclusively the modern constitutional role of judicial review. However the absence of a direct statutory obligation would suggest that the function is not public. The boundary between public law and private law may not be capable of precise definition, and as observed in ***R. (on the application of the Liberal Democrats) v ITV Broadcasting Ltd (2019) EWHC 3282 (admin); 2003 EWCA Civ 57; 2003 ICR 599*** (Scot LJ.) “.....whether a decision has a sufficient public law element to justify the intervention... by the judicial review is often as much a matter of feel, as deciding whether any particular criteria are met.”

41. Nonetheless, a non-statutory and purely private contract of employment is not amenable to writ jurisdiction and this principle has been recently reiterated in ***Ramkrishna Mission*** (*supra*) and followed in ***St. Mary's*** (*supra*).

42. A regulatory body who derives its powers and functions from a statute is different from a body who requires its conduct to be regulated by such Regulatory body in discharging its duties. This has been succinctly explained by Lord Woolf CJ, in ***Poplar Housing and Regeneration Community Association Ltd v. Donoghue, (2001) EWCA Civ 595; (2002) QB 48, para 65(v)***:

“What can make an act, which would otherwise be private, public is a feature or a combination of features which impose a public character or stamp on the act. Statutory authority for what is done can at least help to mark the act as being public; so can the extent of control over the function exercised by another body which is a public authority. The more closely the acts that could be of a private nature are enmeshed in the activities of a public body, the more likely they are to be public. However, the fact that the acts are supervised by a public regulatory body does not necessarily indicate that they are of a public nature. This is analogous to the position in judicial review, where a regulatory body may be deemed public but the activities of the body which is regulated may be categorised private.”

43. The following general propositions can be guiding factors in deciding the issue:

I. The fact that a service is for the public benefit does not mean that providing the service is a public function;

II. The fact that a function has a public connection with a statutory duty of a public body does not necessarily mean that the function is itself public;

III. The fact that a public authority could have performed the function does not mean that the function is a public one if done by a private body;

IV. The private profit-making motivation behind a private body's operations points against treating it as a person with a function of a public nature; and functions of a public character are essentially functions which are governmental in nature. [see, **De. Smith's Judicial Review** (9th Edition)]

44. The summary of the aforesaid principles are indicated in ***R. (on the application of the Liberal Democrats) v ITV Broadcasting Ltd (2019) EWHC 3282 (admin); (2020) 4 W.L.R. 4 at 72.***

45. All the aforesaid principles have been elaborately discussed and explained in ***St. Mary's Education Society*** (*supra*) in paragraph 66 in which it is held as under:

“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.” (emphasis supplied)

46. The law was summarised in paragraph 75 in which it has been clearly stated that the actions and decisions if are “solely within the confines of an ordinary contract of service, having no statutory basis or backing” such institutions are not amenable to writ jurisdiction. Imparting education by a Private Unaided School even if it is perceived to be a public duty unless in respect of matters relating to services in such institution are governed or controlled by statutory provisions the actions taken within the confines of an ordinary contract of service are not amenable to writ jurisdiction. It is only where the removal of an employee or non-teaching staff is in contravention of law and in breach of statutory provision the courts may interfere. However, the reason for such interference is “on the ground of breach of law and not on the basis of interference in discharge of public duty” (see. **St. Mary’s Education Society** (*supra*) para 75.4).

47. Recently a Co-ordinate Bench in ***Narayana School, Barasat & Anr. Vs. Anisur Rahman & Ors.***, (MAT 1278 of 2021, CAN 1 of 2021) in its judgment dated 29th July, 2022 the Hon'ble Division Bench was considering the plea of teachers regarding poor pay structure and unilateral decision to reduce the salary. The writ petition was allowed. The Co-ordinate Bench upon considering plethora of decisions had declined to accept the appellant school as "other authority" amenable to writ jurisdiction. Simply because of its affiliation to CBSC and it is guided and regulated by the by-laws framed by it. It was found that the Board had no direct or pervasive control over the private affairs of the school except to the extent of affiliation nor does it require any approval for appointment of teachers like the present respondent no.6.

48. The Division Bench held as under:

"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."

49. Apart from the nature of the rights sought to be enforced in ***Narayana School*** (*supra*) it is quite discernible from the judgment that like the present one the contract between the school and the teachers were attempted to be enforced. The relief was denied as the contract was purely non-statutory and private in nature.
50. In view thereof the appeal fails. The appeal and the application are dismissed.
51. However, there shall be no order as to costs.

(Soumen Sen, J.)

UDAY KUMAR, J.: –

1. I have the opportunity to read the judgment of my esteemed colleague Justice Sen and I fully concur with the view expressed by Justice Sen. I however, like to give my reasoning separately on the maintainability of the writ petition.
2. This appeal is at the instance of a writ petitioner and is directed against the judgment and order dated 06th April, 2022 of Hon'ble Single Bench passed in **WP No.1377 of 2022**, by which the Hon'ble Single Judge has dismissed the writ petition on the ground of non-maintainability as the respondent institute does not fall under the authority amenable to writ jurisdiction.

3. Briefly stated, the appellant/writ petitioner, Pinaki Dhar was appointed to the post of Assistant Professor in Electrical Engineering Department at Calcutta Institute of Technology (hereinafter referred to as respondent-6) on 15th July, 2014, vide Memo Number **F17(03)BCI/HR/APPN/2014-2015/1161**, and he intended to improve his qualification by doing Ph.D course needed for future promotion in service as per requirement of U.G.C. norms. So, on 16.07.2018, the appellant enrolled himself in 'CSIR-SRF Scholar' programme, under the guidance of Dr. Niladri Chakraborty at Jadavpur Power Engineering Department, on the strength of NOC dated 13.06.2018 issued by respondent-7. After joining the course, he applied to respondent-7 for his release on lien so that he could be able to conclude his Ph.D course successfully, but respondent-7 rejected it on the ground that N.O.C was granted to him only for "fulfilling Ph. D registration process" to pursue his research as part time research scholar, to enable him to finish his research without affecting the classes at institute. Despite that, the appellant prayed to the respondent-7 for the grant of 'study leave' on 17.01.2019, to which the respondent-7 responded to appellant that "subsequent to his letter dated 24.08.2018, you neither joined the institute nor resigned from existing post, considering your long absence from duties, you are hereby discharged from your duties of the present position with immediate effect."Amidst the several communication, he requested

respondent 7 for permission to resume his duty in the Institute from 01.08.2021 i.e., a day after completion of his CSIR-SRF fellowship course, but the same was not allowed on the ground that he is no longer a faculty member in respondent 6 as he was discharged from service, and the same was communicated through e-mail, to the appellant on 30.07.2021. Subsequently, the appellant made a demand for justice through lawyer against the order of his discharge from the service passed without giving him opportunity of hearing, but respondents remained indifferent.

4. Being aggrieved by the aforesaid act of respondent-7, the appellant invoked the writ jurisdiction of the High Court under Article 226 of the Constitution of India by filing this Writ Petition **No.1377 of 2022** against seven respondents, as necessary parties, to challenge the legality of the order dated 13.02.2019 by which he was discharged from the post of Assistant Professor on the ground of his unauthorized absence from duty vide Memo **F11/Prin/2018-19/11** and order dated 30.07.2021 by which his prayer for resumption of duty at C.I.T was rejected by respondent-7 and he prayed for direction on the respondent authorities to cancel, withdraw and rescind the orders dated 13.02.2019 and 30.07.2021 respectively and to allow the petitioner to resume his duty as the Assistant Professor in Electrical Engineering Department at C.I.T., on the following grounds :-

- (i) the disputed orders were passed in his absence without giving him opportunity of hearing, which amounts to violation of principle of natural justice and that;
- (ii) he proceeded to enroll himself for Ph.D course after getting proper “no objection certificate” issued by respondent 7;
- (iii) the order for refusal of lien amounts to violation of article 14 of the Constitution of India because it affects his right to equality of opportunity.
- (iv) the Calcutta Institute of Technology is an instrumentality of State within the meaning of Article 12 of the constitution of India because it is discharging public functions by imparting education.

5. The respondent institute contested the writ petition and specifically contended that the writ petition is not maintainable because the Calcutta Institute of Technology, is a private unaided self-financed technical institution, as per Article 51 of the Approved Process Handbook of AICTE. The State respondent has adopted the plea of respondent institution.
6. The learned Single Judge on consideration of the rationness decidendi in (i) ***Ramkrishna Mishan vs. Kago Kunya (2019) 16 SCC 303***, (ii) ***Andi Mukta Sadguru Shree Muktajee Vandas Swamy Suvarna Jayanti Mahotsavsmarak Trust vs. V.R Rudhani, (1989)2 SCC 691***, (iii) ***Binny Ltd vs. Sadasivan, (2005)6 SCC 657***, (iv) ***K.K Saksena vs. International Commission On Irrigation and Drainage (2015) 4 SCC 670***, held:

“In the present case, the dispute is essentially of a private nature. The institute being a private body, has discharged the petitioner on grounds, which would appear from the writ petition. The challenge arises out of a contract of employee between the petitioner and the institute. Civil remedies are available to the petitioner for enforcing his rights. Article 21 A of the Constitution of India right to education cannot be praised to service in the project case to bring the respondent institution within the field of article 2 to 6 this code fails to see any public element in the challenge set to be urged in the facts of the case.

In view of the above reasons, this court finds no merit in the contentions that the respondent institute should be described as an authority which would be amenable to the writ jurisdiction.

W.P.A 1377 of 2022 is accordingly dismissed without any order as to costs.”

7. The said order is challenged in this appeal, *inter alia*, on the ground that –

i. The respondent 6, the Calcutta Institute of Technology, being a Technical Institution, is imparting technical education to its students, and thereby, is discharging public functions and duties akin to the sovereign functions, as discharged by the State, to fulfill the objective of Article 21A of the constitution of India.

ii. By dint of the service discharged by the respondent 6, it will come under the ambit of ‘Other Authority’ as defined under article 12 of the constitution of India. So, its acts shall be genuinely come under realm of writ jurisdiction.

iii. Respondent 6 is bound to follow the rules and regulations of West Bengal University of Technology and AICTE to which it is

affiliated. Affiliation to WBUT will bring the respondent 6 under the expression of 'any person or authority' as enumerated under article 226 of the constitution of India because by virtue of affiliations the respondent authority, ipso facto, bound to follow the rules and regulation of All India Council for Technical Education, a statutory body under the government recognized by University Grant Commission and affiliation to West Bengal University of Technology.

8. Mr. Firdaus Shamim learned Advocate appearing on behalf of the appellant in support of the aforesaid grounds of challenge has submitted that the impugned order is contrary to the principles settled by Hon'ble Supreme Court in the decisions in ***Andi Mukta Sadguru*** (*supra*) including **St. Mary's** case that the writ jurisdiction under Article 226 of the Constitution of India will extend to private, unaided, non-governmental institution if it is discharging a public function. However, the Hon'ble Single Judge has erroneously held that writ against respondent-6 Calcutta Institute of Technology will not lie as it is not performing public duties as to be performed by State Authorities. Mr. Samim has argued that a private institution imparting education is fact performing public duty inasmuch as the said institution is required to follow the rules and regulations of UGC and AICTE. The teachers are required to be paid salary in terms of the norms laid down by such regulations. The learned Single Judge has failed to consider that the acts involving public element, when performed by private self-financed institution in an arbitrary and unreasonable manner and in violation of

the principle of natural justice, such private body would be amenable to judicial review.

9. Ld. Counsel referred to certain instance to establish that there was deep and pervasive control of the Government in the administration of the self-financing institutions like private respondent -

- (i) the respondent institution received grants-in-aid from public exchequer under Pradhan Mantri Kaushal Vikas Yojana for technical institutions in the year in the financial year of 2016-17, 2017-18, 2018-19. Utilization of public fund by respondent 6 and 7, would bring him under the expression of any person or authority.

- (ii). the letter of the Inspector of College, West Bengal University of Technology dated 22.07.2010 by which the Principal /Director of all affiliated colleges were directed to act in accordance with clause 8 of the first regulation to affiliation.

- (iii). the Member Secretary AICTE who issued a notification on 03rd March 2000 to private colleges for recommendation and implementation of pay scale and service condition of teachers in Private self-financing Degree Level Technical Institutions in country.

10. Ld. Counsel further submitted that Hon'ble Single Judge has wrongly concluded that matter relating to service in private institutions are guided by terms and conditions of a contractual agreement and remedies for breach of any terms and conditions of the contract, civil remedies are available before civil courts. He relied on the ratio enumerated in ***Binny Ltd & Anr. vs. Vs. Sadasivan & Ors.*** reported

in **(2005) 6 SCC 657** wherein his Lordship has succinctly laid down at Para 32 that writ of Mandamus can be issued against a private body which is not state within the meaning of Article 12 of the Constitution, however there must be existence of public law element in it. In this regard Hon'ble Supreme Court has decided in **Janet Jeyapaul vs. SRM University** reported in **(2015) 16 SCC 530** that SRM university is imparting education thus playing the role of public functionary and amenable to writ jurisdiction. Similar views are expressed in **Ramkrishna Mission vs Kago Kunya** reported in **(2019) 16 SCC 303**, **Federal Bank Ltd. vs Sagar Thomas** reported in **(2003) 10 SCC 733**, **Andi Mukta Shree Mukatjee Vanda Swami Jayanti Mahotsav Smarak Trust vs. V.R Rudani** reported in **(1989) 2 SCC 691**, **K.K Saksena vs. International Commission on Irrigation and Drainage** reported in **(2015) 4 SCC 670**, **Ramesh Ahluwalia vs. State of Punjab & Ors.** reported in **(2012) 12 SCC 331**, **Jayanti Mondal vs. State of West Bengal** reported in **(2017) 2 CALLT 641 (HC)**, **Santa Kanugo vs. The Director of Public Instruction, Education Directorate & Ors.** reported in **(2020) 1 SLR 741**, **Marwari Ballika Vidyalya vs. Asha Srivastava & Ors.** reported in **(2020) 14 SCC 449**. The Hon'ble Calcutta High Court has also decided the same issue in **Governing Body, Durgapur Institute of Advance Technology and Management vs. Subhanghusuman De** reported in **(2015) 4 CHN**

671 and **Jayanti Mondal vs. State of West Bengal** reported in **2017 SCC Online Cal 362**.

11. On the contrary, Mr. S.P Lahiri, Ld. Counsel appearing for respondent 6 and 7 submitted that the Hon'ble Single Judge has rightly dismissed this writ on the ground of non-maintainability as the writ was bad due to non-joinder of necessary party namely Uluberia Rural Society for Care of Health and Research Development in short (URSCHR) which had been a registered society. Respondent 6 was functioning under the same Society.
12. Secondly, as per definition of self-financing institution given under Article 51 of the AICTE, the respondent institute is a purely private, unaided, non-government, self-financed engineering college which bears its expenses by generating its own revenue. The writ jurisdictions are only available to the Government aided institution and does not extend to the private self-financing institution. Accordingly, the Hon'ble Single Judge has rightly held that this writ petition is not maintainable against the respondent institute because no public element is involved therein and hence, dismissed the writ petition.
13. Ld. Counsel further submitted that mere payment of grant-in-aid to any private institutions in any particular scheme for particular purpose will not bring them, mutatis mutandis, under the category of state or public financed institutions. The grant under Pradhan Mantri Kaushal Vikas Yojana was released to encourage the institution for

making the best use of available infrastructure of higher education system during 'off-hours' for skill training and provide employable and certifiable skills based on National Occupation soft skill to the school dropouts who wanted to pursue higher order skills and living in the vicinity of the college. Mere grant of aid of such nature under specific scheme and purposes would not enable the appellant to challenge the order of discharge of academic faculty of a private technical university.

14. Ld. Counsel stated that being affiliated to WBTU and AICTE, demand essential statutory requirement for running of a private institution. It may not be equated with the assumption of deep and pervasive control of State in running the institute. Therefore, Hon'ble Single Judge rightly dismissed the writ petition seeking remedy against a private institution, in which no public element is involved.

15. Learned Counsel has submitted that no objection certificate was issued to appellant only for Ph.D registration process and for pursuing his Ph.D part time. Issuance of NOC doesn't mean permission of institution but it shows the that institution is informed about that fact. He was permitted for the Ph.D course from Jadavpur university as a part time fellow. Reasonably his prayer for lien and study leave was refused due to faculty condition and more student load. It was the genuine ground for discharging appellant from the institute. All other allegations are false and frivolous. This is not a fit case where the writ jurisdiction of Hon'ble High Court shall be invoked.

16. In respect of the letter of respondent 7 dated 13.02.2019 by which the appellant was discharged and letter dated 30.07.2021 by which the appellant was not permitted to reinstate in his service from 01.08.2021 i.e., after completion of Ph.D course, he stressed that both the letters were related to his conditions of service. He was discharged due to long absence from the college. His presence was necessary considering the lesser number of faculty and a greater number of students. His long absence from duty had adversely affected the teaching atmosphere. Institute was unable to discharge its functions properly. Therefore, both orders were justified in the interest of the institution.
17. Secondly, his service was completely guided by the terms and conditions of letter of appointment. By no stretch of imagination, the private employment could be dragged within the ambit of writ jurisdiction of the High Court.
18. The Ld. Counsel lastly submitted that impugned order was passed on the 13 February, 2019, but the appellant challenged under this writ application in 2022, i.e., after inordinate delay of more than 3 years. So, the writ was rightly dismissed as non-maintainable.
19. On the conspectus of the aforesaid facts and the submissions advanced before us, the seminal points in the instant appeal to determine is that-

a) Whether a writ petition under Article 226 of the Constitution of India is maintainable against all decisions of a body performing public duty or only those decisions of a private unaided technical institution which have public element therein?

b) Whether a service dispute in terms of the private contracts in a private educational institution and other disputes of its employee arising out of a contractual relationship would be amenable to writ jurisdiction of High Court under Article 226 of the Constitution?

20. The question before us is whether the writ jurisdiction of High Court would be extended to the subjects relating to functions and orders of private institutions or not? Indubitably, as per scheme of Article 32 and Article 226 of the Constitution, the writ is entertainable only against the acts of State or statutory body of like nature. So, prior to delving deep into the domain of discussion on the maintainability of writ of mandamus against private entities, it would be apt to consider whether private institution would come under the purview of 'State' within the meaning of Article 12 of the Constitution of India and to reproduce the interpretation of the phrase the words "any person or authority" used in Article 226 to see whether private entities would come under this phrase or not and if yes, then to what extent.

21. The term State under Article 12 has been defined as the "State" includes the government, Parliament, and all local or other authorities within the territory of India or under the control of the Government of

India. The 'Other Authorities' includes all such authorities and institutions which lie within the territory of India and are controlled by the government of India through its acts and amendments. Private institutions, such as corporations or N.G.O etc., are not considered as "State" under Article 12 as they are not significantly controlled or financed by the Government or have instrumentalities of the Government. In "**Ramana Dayaram Shetty vs. The International Airport Authority of India**" the Hon'ble Supreme Court laid down certain test for determining whether a body/institution is an agency or instrumentality of the Government: -

1. Financial resources of the State are the chief funding source
 2. Existence of deep and pervasive State control
 3. Functional character being governmental in essence, i.e., if the functions are of public importance closely related to govt functions
 4. If a department of Govt is transferred to a corporation
 5. Whether the corporation, enjoys monopoly status which is State conferred or State produced.
22. It signified that a private institution or body, if fulfilling any of the above criteria, would come under the ambit of writ jurisdiction.
23. In this respect, we required to mull over on the provisions of Article 226 of the constitution of India, which confers power on the High Courts to issue writs for enforcement of fundamental rights as

well as non-fundamental rights. Article 226 of the Constitution, reads as under:

Article “226 (1). Power of High Courts to issue certain writs. -

- (1) Notwithstanding anything in article 32, every High Court shall have powers, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories’ directions, orders or writs, including writs in the nature of habeus corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

24. In respect of the power of High Court to issue writs under article 226 of the Constitution, it was held by Hon’ble Supreme Court in ***Whirlpool Corporation vs. Registrar of Trademarks, 21 (1998) 8 SCC 1***, that-

“14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for “any other purpose”.

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and

efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.”

25. In ***Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Suvarna Jayanti Mahotsav Samark Trust & Ors. v. V.R. Rudani***, (1989) 2 SCC 691, it was held by the Supreme Court that “The words any person or authority” used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant.” The paragraph 15, 17 and 20 are relevant -

“15. If the rights are purely of a private character no mandamus can be issued. If the management of the college is purely a private body with no public duty mandamus will not lie. These are two exceptions to Mandamus but once these are absent and when the party has no other equally convenient remedy, mandamus cannot be denied...”

17. There, however, the prerogative writ of Mandamus is confined only to public authorities to compel performance of public duty. The public authority for them means everybody which is created by a statute and whose powers and duty

are defined by a statute. So, government department, local authorities, police authorities and statutory undertakings and corporation are all public authorities but there is no such limitation for our court to issue the writ in the nature of mandamus. Article 226 confers wide powers on the high court to issue writ in the nature of prerogative writs...

20. the term 'authority' used in article 226 in the contest much receive a liberal meaning unlike the term in article 12. Article 12 is relevant only for the purpose of enforcement fundamental rights under article 32. Article 226 confers power on the high courts to issue writs for enforcement of fundamental rights as well as non-fundamental rights. The words any person or authority used in article 226 are therefore not to be confined only to a statutory authorities and instrumentalities of the state Indians. They may cover any other person. What is relevant is the nature of the duty import on the body. The duty must be judged in the light of positive obligation or by the person or authority to the affected party. No matter, by what means the duty is imposed if positive obligation exists mandamus cannot be denied."

26. In this context, the observation of Supreme Court made in **Ramesh Ahluwalia vs. State of Punjab, (2012) 12 SCC 331**, that: -

"In our opinion, in view of the judgment rendered by this Court in the case of Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust (supra), there can be no doubt that even a purely private body, where the State has no control over its internal affairs, would be amenable to the jurisdiction of the High Court

under Article 226 of the Constitution, for issuance of a writ of mandamus. Provided, of course, the private body is performing public functions which are normally expected to be performed by the State Authorities”

and in ***Binny Ltd vs B. Sadasivan (2005) 6 SCC 657***, that: -

“32. Applying these principles, it can very well be said that a writ of mandamus can be issued against a private body which is not a “State” within the meaning of article 12 of the constitution and such body is amenable to the jurisdiction under Article 226 of the constitution and the high court under Article 226 of the constitution can exercise judicial review of the action challenged by a party. But there must be a public law element and it cannot be exercised to enforce purely private contract entered into between the parties.” are relevant.

27. Similarly, Hon’ble Supreme Court held in ***Zee Telefilms Limited vs Union of India*** reported in **(2005) 4 SCC 649** and in ***Marwari Ballika Vidyalaya vs. Asha Srivastava & Ors.*** reported in **(2020) 14 SCC 449**, that “writ can be issued against the private unaided educational institutions if it is discharging public function” are also an important consideration.

28. In the same way this High Court has held in ***Governing Body, Durgapur Institute of Advance Technology and Management vs. Subhanghusuman De, (2015) 4 CHN 671***, that -

“if a Respondent performs public functions and provides education to children in their institutions, then the

issuance of a Writ cannot be withheld merely because the Respondent is a purely unaided private educational institution.”

29. In **Jayanti Mondal vs. State of West Bengal 2017 SCC Online Cal 362: 2017(2) Cal LT 641 (HC)** the fact of State control was considered and held as under:

“No single factor is decisive as to whether or not a body is a State or other authority within the meaning of Article 12 of the Constitution. Of course, if the administrative or financial control of the State over a body and its internal affairs is all pervasive, clearly the body would be amenable to the writ jurisdiction of the High Court. However, even an unaided institute enjoying complete autonomy and free from State interference as regards its internal administration may be amenable to the writ jurisdiction if the institute discharges functions of a public nature. It is irrelevant whether or not such public function is being performed pursuant to any statutory mandate. If a body operates in the public field touching the lives of public at large, its acts and omissions should be amenable to judicial review on the usual grounds of arbitrariness, unreasonableness, breach of natural justice etc.”
(emphasis supplied)

30. A similar observation was made in **Santa Kanungo v. The Director of Public Instruction, Education Directorate & Ors.**, reported in **2020 (1) SLR 749** wherein the learned Judge also dealt with the connotation of words “public duty” and distinguished **Ramesh**

Ahluwalia (*supra*) by stating that imparting education to children is covered under Article 21A of the Constitution of India.

31. A Co-ordinate Bench of this High Court has also decided this issue in **MAT 1278 of 2021, Narayana School, Barasat & Anr. vs. Anishur Rahman & Ors.** on 29th July 2022 and held that: -

“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 function. Merely because a writ petition can be maintained against the private individuals discharging the public duties and / or public function, 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 available to writ jurisdiction yet every dispute concerning the state 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 institutions. 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 periphery of public duty. There must be a public law element in any action.”

32. In the case of ***Ramakrishnan Mission v. Kago Kunya, (2019) 16 SCC 303***, Ld. Single Judge held that “Ramakrishna Mission is ‘State’ within the meaning of Article 12 of the Constitution of India.” It was challenged before Ld. Division Bench who observed that “while Ramakrishna Mission may not be ‘State’ within the meaning of Article 12 in the strict sense of the term, nonetheless it’s hospital at Itanagar performs a public duty and in consequence would be amenable to the writ jurisdiction under Article 226 of the Constitution.” Ultimately, the order passed by division bench was challenged before the Supreme Court, who drawn inferences or conclusion that “contracts of a purely private nature would not be subject to writ jurisdiction merely by reason of the fact that they are structured by statutory provisions” except where the contract of service is governed or regulated by a statutory provision. So, neither the Ramakrishna Mission, nor the hospital would be an authority within the meaning of Article 226 of the Constitution. Accordingly, the view of the Ld. Division Bench of the High Court that the appellants are amenable to the writ jurisdiction under Article 226 of the Constitution as an authority within the meaning of the Article, was not based on correct position of law.
33. Its ratio was verified, tested and applied by Supreme Court in subsequent cases like ***St. Mary’s Education Society & Ors. v. Rajendra Prasad Bhargava & Ors.***, reported in **2023 (4) SCC 498**, wherein it was held 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.

34. A Full Bench of the High Court of Allahabad in ***Uttam Chand Rawat vs. State of U.P.***, reported in ***(2021) 6 All LJ 393 (FB)***, coined a question that:

"(i) Whether the element of public function and public duty inherent in the enterprise that an educational institution undertakes, conditions of service of teachers, whose functions are a sine qua non to the discharge of that public function or duty, can be regarded as governed by the private law of contract and with no remedy available under Article 226 of the Constitution?"

The Full Bench proceeded to answer the aforesaid question as under:

"16. The substance of the discussion made above is that a writ petition would be maintainable against the authority or the person which may be a private body, if it discharges public function/public duty, which is otherwise primary function of the State referred in the judgment of the Apex Court in the case of Ramakrishnan Mission (supra) and the issue under public law is involved. The aforesaid twin test has to be satisfied for entertaining writ petition under Article 226 of the Constitution of India.

35. Consequent to the above findings, the Hon'ble Supreme Court deduced detail guidelines on the circumstances under which the High

Court may issue prerogative writs, as enumerated under paragraph 69 of **St. Mary's** case Judgment (supra). The guidelines are mentioned as under-

69. *we may sum up our final conclusion as under-*

(a) 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 a 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.

(b) 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 confirms 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 a statutory provision or the employer had the status of a 'state' within the expansive definition under article 12 or it was found that the action complained of has public law element.

(c) It must be consequently held that while a body may be discharging a public function or performing a public duty and thus its action becoming amenable to judicial review by a constitutional court, its employee would not have the right to invoke the powers of high court confirmed by article 226 in respect of matter relating to service where they are not governed or controlled by the statutory provisions and educational institution may perform myriad functions touching various facet of public life and in the societal sphere. While such of those functions as would fall within the domain of the 'public function' or 'public duty' be undisputedly open to challenge and scrutiny under article 226 of the constitution, the actions or directions taken solely within the confines of the ordinary contract of service having no statutory force or backing cannot be recognized as being amenable to challenge under article 226 of the constitution. In the absence of the service conditions being controlled or governed by a statutory provision, the matter would remain in the realm of an ordinary contract of service.

(d) 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 is school to discharge that duty. In any case, the term of employment of contract between the 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 of 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 the law and not. On the basis of interference in discharge of public duty.

(e) From the pleading in the original writ petition, it is apparent that no element of 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.”

36. In the light of the decision in **Ramkrishna Mission** (*supra*) and **St. Mary's Education Society** (*supra*) the decision in **Governing Body Durgapur Institute of Advanced Technology and Management** (*supra*) and **Jayanti Mondal** (*supra*) are required to be revisited. The ratio in **Jayanti Mondal** (*supra*) and **Durgapur Institute** (*supra*) is no more the correct test to be applied in deciding the dispute between the employer and employee of an Unaided Self-financed Private Institution unless the criteria laid down in **Ramkrishna Mission** (*supra*) and **St. Mary's Education Society** (*supra*) are fulfilled.

37. We have heard both the sides in full, considered the legal propositions and given anxious thought to questions posed before us to decide. In the light of the guidelines and principles as laid down by the Hon'ble Supreme Court, we considered the existing facts and

circumstances of this case. Indisputably, the appellant was appointed vide letter **No. F17 (03) BCI/HR/APPN/2014-2015/1161**, dated 15th July, 2014 represented as follows: -

"Pinaki Dhar
12/ 940, Block-C, Purbasa (Nr. Katpole)
Aswininagar, Baguiti
Kolkata 700159
Dear Sir,

With reference with your application and subsequent interview you had with us, we are pleased to offer you the position of Assistant Professor in Electrical Department at Calcutta Institute of Technology, Uluberia, Howrah, West Bengal our organization with effect from 15th July, 2014, on the following terms and conditions:

1	Salary & Allowances	You will be paid a consolidated salary of Rs.15600
2	Place of posting	Initially you will be posted at Calcutta Institute of Technology, Uluberia, Howrah. You are, however, liable to be transferred from one department/unit to another.
3	Termination of service	Your service is terminable on one month's notice from either side and only after completion of the ongoing semester.
4	Reporting	You will be reporting to the Executive Director/ Principal/ HOD, Calcutta Institute of Technology (CIT), Uluberia, Howrah.
5	Job Responsibilities	Job responsibilities as may be assigned to you from time to time by the Principal/ HOD.
6	General	(a) You will have to abide by the service rules and regulations of the Institute now existing and as may be framed and / or amended from time to time. (b) You will devote your full time, attention and capability to your best in the interest of the Institute. (c) You will not take any interest or engage yourself directly or indirectly in any other business and/or do any trade on your account including private tuition.
7	Confidentiality	You will treat the affairs of the Institute as you may be cognizant in the due course of your work responsibilities as "Strictly Confidential". In rendering your service, you will ensure that the interest of this Institute is protected at all times

		<i>and you will not in any way do anything or commit any act of omission which is likely to affect the interest of the Institute adversely in any manner whatsoever.</i>
8	<i>Probationary period</i>	<i>One year from the Period the date of appointment. This will be followed by appraisal for confirmation.</i>

If the above-noted terms and conditions of the employment are acceptable to you please return to us the duplicate copy of this letter duly signed by you as token of your formal acceptance of this offer of employment of receiving of this letter.

You will treat these terms and conditions of your employment as confidential.

Thanking you,

Yours faithfully,

Sd/-

Executive Director.

Copy to - The Executive Chairman, for kind information, The Deputy Director

- The Principal-CIT, The Registrar, The Accounts Officer / Bill Clerk"*

38. The legality of letters dated 13th February 2019 and 30th July 2021 are in question. The appellant was 'discharged' by Respondent No.7 on the ground of his long absence from duty under the guise of attending regular Ph.D course from Jadavpur University, and he flouted the direction of private respondent authority by vide his letter dated 13th February 2019. It denotes as follows –

"To

Mr. Pinaki Dhar, Asst. Professor, Department of Electrical Engg.

Calcutta Institute of Technology

12/940, Block "C", Purbasha Katpole

Aswininagar, Baguiati

Kolkata-700 159.

Dear Mr. Dhar

Subsequent to my Letter No. F11/Prin./2018-19/05 dated 24th August 2018, you have neither joined the institute nor resigned from the existing post. Considering your long absence from the duties, you are hereby discharged from your duties of the present position with immediate effect.

*Yours faithfully,
Prof. (Dr.) Priyabrata Sarkar
Principal-in-charge-CIT*

Copy to: Secretary, URSCHARD"

39. Thereafter, on the completion of his Ph. D course, the appellant prayed to respondent 7 'to permit to reinstate him on his post in C.I.T. from 01.08.2021',

"29th June 2021

To

The Secretary

Calcutta Institute of Technology (C.I.T.)

(A Unit of URSCHARD)

Banitabla, Uluberia, Howrah-711316, W.B., India

Subject: Formal Intimation for resuming normal duties at C.I.T. from 01/08/2021

Dear Sir,

This is to mention that you are well aware of the following facts: -

- 1. I joined C.I.T. on 15th July 2014 (15/07/2014) as 'Assistant Professor' in the 'Department of Electrical Engineering at C.I.T. Campus, Uluberia, Howrah-711316 as a Regular employee.*
- 2. I have been on 'STUDY LEAVE' for pursuing 'PhD (Engineering)' at 'Jadavpur University as CSIR-SRF Direct from 16th July 2018 (16.07.2018) with due N.O.C. dated 21.11.2017 followed by due certification dated 13.06.2018 both being issued by the then Principal In-Charge, C.I.T.*

Therefore, the following are for your kind intimation: -

- 3. My CSIR-SRF Direct fellowship is going to expire on 31st July 2021 (31/07/2021).*
- 4. And thus I am going to resume my normal duties again from 1st August 2021 (01/08/2021) at the same post last served in the said department at C.I.T. Campus, Uluberia, Howrah-711316 as per rules.*

Hope the above will serve the official purpose.

Thanking you

Yours sincerely

PINAKI DHAR"

40. The said request of appellant however, was rejected by respondent-7 vide his letter dated 30th July 2021.
41. Admittedly, the respondent No.6 is a private technical institution, meant for fostering technical education. The service of teachers and staffs are regulated by terms and conditions of the agreement on which they have agreed to join. In this case, respondent No.7 terminated the appellant due to alleged gross violation of terms and condition of the service. Undoubtedly, the order of 'Discharge of appellant from the institute' is nothing but a severance of their relationship on the ground of violation of alleged non-adherence and breach of the terms and conditions of the contract. The remedies lie with under Civil Laws because the said agreement is purely private in nature and exhibit no public character. It is now settled law that mere violation of condition of service will not provide a valid basis for exercise of the writ jurisdiction under Article 226, in a situation where the activity does not have any feature of a public duty. The contract of employment has no statutory or public law flavour. By no stretch of imagination, the question of public function elements or breach of public duty is involved herein.
42. In any event, we find that the law is now well settled that private institution would be amenable to the writ jurisdiction of High Court only when it is performing public function or the order bears public element therein. Actually, the principles laid down by Supreme Court

are clear on the point that the writ of mandamus can be issued to any person or authority, including private entities and persons, if the said person or entity is performing a public duty or owing a positive obligation. It is immaterial if the public duty is conferred by any statute or regulation. While performing a public duty by a private body or any other body, if any individual rights are infringed, then the Court shall consider the writ of mandamus and restore that right. Barring few exceptions, the Hon'ble Supreme Court has expanded the vistas of the writ of mandamus by observing that this writ should not be considered in the water-tight arrangement but it should be widened to the extent necessary for providing complete justice by imparting new meanings to the expression 'any person and authority' used in Article 226 of the Constitution.

43. In view of the above discussion, we may conclude that High Court may issue prerogative writ against private unaided institute or private body only when it is discharging public functions and duties akin to the sovereign functions, as discharged by the State, but writ petition for enforcement of private contract of service is not maintainable. It is also settled position of law that when a right is created by a statute, which itself prescribed the remedy or procedure for enforcing the right or liability, resort must be had to that particular remedy before invoking the remedy under Article 226 of the Constitution of India. In other words, we can say that a writ petition under Article 226 of the

Constitution of India is maintainable only against those functions of private unaided technical institution or private entities which assumed to be performed by State affecting the interest of people or have public element therein or discharging any public functions and duties akin to the sovereign functions, as discharged by the State. The other functions of the private institutions which do not affect interest of public would not come under the realm of writ jurisdiction of the High Court. It means that no writ petition for enforcement of private contract of service i.e., appointment, discharge and other service conditions of teaching and non-teaching staff, and against a right created by a statute, which itself prescribed the remedy or procedure for enforcing the right or liability, would be maintainable in the High Court because resort must be had to that particular statutory remedy. Therefore, a service dispute in the private realm involving a private educational institution and its employee cannot be adjudicated by High Court in a writ jurisdiction.

44. Consequently, we are of the view that:

- (i) All decisions of a body performing public duty are not amenable to writ jurisdiction of a High Court but only those decision will be reviewed under the writ jurisdiction which have public element therein.
- (ii) A service dispute in terms of the private contracts in a private educational institution and other disputes of its employee arising out of a contractual relationship would not be adjudicated by

High Court in a writ petition filed under Article 226 of the Constitution.

45. Accordingly, we are of the view that no writ of mandamus can be issued to Private Respondents against the impugned orders as is not affecting any public right. Secondly, it is also imperative that the writ of mandamus can only be issued, if there is unavailability of equally convenient remedy. In present case appellant did not exhaust the appropriate remedy. Moreover, appellant challenged orders of the respondent 7 which affected his personal interest. He did not utter anything about how this order affect the respondent No.6 in discharging his duties towards student. The affiliations to WBTU and AICTE and receiving of grant-in-aid, etc. are not a relevant consideration in this matter.

46. Therefore, we hold that the learned single Judge is justified in dismissing the writ application by taking the view that it is not maintainable.

47. In view of the aforesaid, this appeal failed and is hereby dismissed. Consequently, the Stay Petition is also dismissed. The impugned judgment and order of the Hon'ble Single Bench passed in the Writ Petition No.1377 of 2022 is hereby, affirmed.

48. It is needless to mention that it shall not preclude the appellant to pursue other legal remedy available to him in accordance with law. We have otherwise not expressed any opinion on the merits of the case.

49. The appeal and the application are dismissed.
50. There shall be no order as to costs.
51. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties on priority basis.

(Uday Kumar, J.)