

JPD-32
Ct No.01
Jalpaiguri
30.7.2024
S.Bag

**Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side**

MAT 199 of 2023
IA NO: CAN/1/2023, CAN/2/2024

PATRICA BHUTIA
VS
THE COMMISSIONER OF SCHOOL EDUCATION
AND ORS.

Mr. Ankush Ray, Adv.
Mr. Dhiraj Lakhotia, Adv.
Mr. Pratap Khati, Adv.

...for the appellant

Mr. Deepan Sarkar, Adv.
Mr. Samriddha Sen, Adv.
Mr. Deborshi Dhar, Adv.

...for the respondent nos. 4 & 5

Mr. Hirak Barman, Adv.
Mr. Anirban Banerjee, Adv.

...for the State

1. In view of sufficiency of reasons for the delay occasioned in preferring the memo of appeal having been shown, CAN/1/2023 is allowed, thereby condoning the delay in filing the appeal. Let MAT/199/2023 be registered.
2. The appeal is now taken up for hearing.
3. Heard learned counsel for the parties.
4. The limited question is whether the Learned Single Judge was justified in law in rejecting the writ petition only on the ground that the respondent-school therein is not a public entity

within the contemplation of 'State' under Article 12 of the Constitution of India.

5. Learned counsel for the appellant places reliance on the definition of "listed school" under the Code of Regulations for Anglo-Indian and other Listed Schools, 1993. In the said Code, in clause 5(10), "listed school" has been defined to mean an English medium school which does not come under the purview of the definition of Anglo-Indian school but is recognized under the Code for the purpose of presenting candidates for the Council/Board Examination under such terms and conditions as the State Board and the Department of Education may prescribe, provided that the school fulfills the conditions as stipulated therein.
6. Learned counsel also relies on clause 24 of the said Code which lays down the procedure for disciplinary action against confirmed staff.
7. The writ petitioner/present appellant was a secretary and a non-teaching staff of the school. The grievance of the writ petitioner is that without complying with the provisions of the Code as laid down therein, the writ petitioner was terminated from service.

8. Learned counsel thus argues that there was a statutory infraction of such a serious nature which called for interference by the writ court.
9. Learned counsel places reliance on *St. Mary's Education Society and Anr. vs. Rajendra Prasad Bhargava and Ors. reported at (2023), 4 SCC, 498*, where the Supreme Court, inter alia, while answering the issue as to whether a writ petition was maintainable and whether in service matters there could be interference, held that even if it is perceived that imparting education by private unaided school is a public duty within the expanded expression of the term, an employee of non-teaching staff engaged by the school for the purpose of its administration or internal management is only an agency created by it.
10. It was also recorded by the Supreme Court that 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.
11. However, the Supreme Court further held that it is only when 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.

12. It is thus argued that the said criteria having been met in the present case, the writ court ought to have interfered under Article 226 of the Constitution of India.
13. Learned counsel for the respondents controverts such submission and argues that no element of public law is involved and as such the learned Trial Judge was justified in passing the impugned order.
14. Upon careful consideration of the ratio laid down in *St. Mary's (supra)*, we are of the opinion that the same did not deviate from the well-settled proposition of law that interference may be made by writ courts even in cases involving private entities, provided a public law element is there in the impugned action. As held by the Supreme Court in the cited judgment itself, the terms of employment of contract between the school and a non-teaching staff cannot and should not be construed to be an inseparable

part of the obligation to impart education, which could have a public law element.

15. This is particularly true in respect of the disciplinary proceedings that may be initiated against a particular employee.
16. Although the Supreme Court provided a short window for interference by the writ court in case of breach of law, in the case referred to by the appellant herself, the Supreme Court refused to interfere, holding that it is apparent that no element of any public law is agitated or otherwise made out.
17. Applying the framework of the said judgment to the present case, the infraction complained of by the writ petitioner/appellant is purely within the domain of a personal service contract between the petitioner/appellant and the respondent school.
18. As such, there is no element of public law involved. We do not find any such palpable illegality or gross miscarriage of justice which would, at the first blush, prompt the writ court to interfere, deeming it to be a gross statutory violation or a violation of any fundamental right having a public law element.
19. We would be failing in our duty to mention that even in cases where there is a breach of law,

there either has to be an infraction of a statutory provision or fundamental right and/or an inaction on the part of a statutory authority on the count of its legal duties imposed by law, which has to be palpable, and there has to be a public law element, which is the underlying common refrain in interference under Article 226 of the Constitution of India.

20. We do not find any such public law element in the present case.
21. That apart, it is trite law that the appellate court is doubly cautious in interfering in intra court appeals and there cannot be any interference merely because on the same set of facts, a different view would be permissible.
22. Even if we were to have the opinion that in the present case there could have been interference by the writ court, we choose to refrain from interfering with the order, since the view of the learned Trial Judge was one of the plausible views available to the writ court.
23. In such view of the matter, we do not find any scope of interference.
24. Accordingly, MAT/199/2023 along with CAN/1/2023 are dismissed without any order as to costs.

25. However, it is made clear that nothing in the above order or the order of the learned Single Judge shall preclude the petitioners/appellant, if otherwise permissible in law, to invoke the appropriate remedy before a proper forum/court for the grievances ventilated before this court.

(Sabyasachi Bhattacharyya, J.)

(Prasenjit Biswas, J.)