



WEB COPY



W.P.No.5663 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2024

CORAM

THE HONOURABLE Mrs. JUSTICE R.KALAIMATHI

W.P.No.5663 of 2015

M.C. Komalavalli

...Petitioner

VS.

1. The Regional Office,
CBSC – Chennai,
Plot N. 1630-A, 'J' Block,
15th main road, Anna Nagar West,
Chennai – 600 040.
2. The Disciplinary Appeal Committee,
Asan Memorial Education Institution,
No.1, Anderson Road,
Cochin House, Chennai – 6,
3. The Principal,
Asan Memoria Educational Institutions,
No.1, Anderson Road,
Cochin House, Chennai – 6.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus calling for the records of the 2nd respondent relating to proceedings dated 24.03.2014 by the disciplinary committee of Asan Memorial Educational Institutions, Chennai vide Res; AMSSS/Secy-G.M./3553/2014 and the order of the appeal committee 06.02.2015 vide No.AMSSS/Principal/433/2015 order



W.P.No.5663 of 2015

passed by the 3rd respondent and quash the same and consequently direct the 3rd respondent the management of the Asan Memorial Educational Institutions, Chennai to reinstate the petitioner with all monetary benefit.

For Petitioner : Mr.V.Raghavachari
Senior Counsel
for Mr.N.Elayaraja

For Respondents :
For R1 : Mr.G. Nayarajan
For R3 : Mr.A.R. Karunakaran

ORDER

This writ petition is filed to order to call for the records of the 2nd respondent relating to proceedings dated 24.03.2014 of the disciplinary committee of Asan Memorial Educational Institutions, Chennai vide Ref:AMSS/Secy-G.M./3553/2014 and the order of the appeal committee 06.02.2015 vide No.AMSSS/Principal/433/2015 passed by the 3rd respondent and to quash the same and consequently to direct the 3rd respondent, the management of the Asan Memorial Educational Institutions, Chennai to reinstate the petitioner with all monetary benefits.

2. The petitioner has joined the Asan Memorial Senior Secondary School Primary Section as a teacher on 09.06.2008. The school is under



W.P.No.5663 of 2015

the management of Asan Memorial Educational Institutions. She was working under the said management nearly for 5 years and 9 months as a teacher. On 19.02.2014, the Principal alleged that she bet Master A.Kabeer on 18.02.2014 who was studying in Class 1-B and due to that he sustained scratch below his left eye. But she never bet any child.

3. She further submits that after leave when she rejoined duty on 24.02.2014, order of suspension was served to her with effect from 20.02.2014. On 26.02.2014, she was given a notice to attend the enquiry on 28.08.2014 at 2.00 p.m. No witness was examined to prove the charge against her and she was asked to give written explanation and the enquiry was closed.

4. It is her further submission that a show cause notice dated 06.03.2014 was issued to her and she was asked to offer her explanation for the enquiry report. The enquiry proceedings and the enquiry report were not served to her. When she was asked to resign on 18.03.2014 as she declined to tender her resignation, the termination order was passed on 24.03.2014. In an appeal before "Disciplinary Committee" of Asan Memorial Educational Institutions, Chennai, the said Committee without considering the grounds raised by her and without conducting any enquiry



W.P.No.5663 of 2015

confirmed the order of termination of her service vide letter dated 08.05.2014.

5. As per the order of this Court in W.P.No.19264 of 2014 a direction was given to CBSC, Sough Zone Chennai to constitute Disciplinary Appeal Committee as per the CBSE Bye-laws. She submitted her explanation to the Disciplinary Appeal Committee. The Disciplinary Appeal Committee dismissed her appeal on 06.02.2015 without any explanation.

6. The learned Senior Counsel Mr.V. Raghavachari for Mr.N.Elayaraja appearing for the petitioner would vehemently contend that the teacher was unnecessarily prosecuted on the ground that as the student was beaten up by her which was totally denied by the petitioner and the said incident is not a serious one which warranted termination. Without following proper procedure, she was terminated from the service which is against the principles of natural justice.

7. Whereas, Mr.A.R.Karunakaran appearing for the 3rd respondent contended that the petitioner was provided with an opportunity of personal hearing to explain her stand on the above incident but she did not offer any specific explanation for the pertinent questions put forth by the Enquiry



W.P.No.5663 of 2015

Officer. It was further contended that the Enquiry Officer concluded that the petitioner was called on charges levelled against her and submitted a report to that effect. The petitioner was called upon to explain as to why her service should not be terminated. For which the petitioner gave a reply dated 11.03.2014 and requested to consider her case sympathetically. Her service were terminated vide order dated 24.03.2014 with effect 25.02.2014.

8. The learned counsel for the 3rd respondent would submit that the writ petition is not maintainable in law. The petitioner cannot invoke writ jurisdiction of this Hon'ble Court and she cannot convert this Court into the fact finding authority.

9. As per order of this Court in the above said writ petitions, the Disciplinary Appeals Committee passed a final order dated 09.01.2015.

10. Admittedly, the said order was not communicated to the petitioner.

11. With regard to the maintainability of this writ petition, the learned Senior Counsel Mr.V. Raghavachari would vehemently argue that the



W.P.No.5663 of 2015

school is run by a society created for the purpose of imparting education.

In order to strengthen his arguments, the following judgments were referred too.

1. St.Mary's Education Society and Another Vs Rajendra Prasad Bhargava and Others (Civil Appeal No.5789 of 2022 dated 24.08.2022)
2. D.Bright Joseph Vs Church of South India (CSI) and others (W.P.No.304272 of 2022 dated 29.02.2024)
3. Marwari Balika Vidyalaya Vs Asha Srivastava and others reported in (2020) 14 SCC 449
4. Mritunjaya Shukla Vs. Central Board of Secondary Education through its Secretary and others reported in 2022 SCC Online MP 2012
5. Janet Jeyapaul Vs. SRM University and others reported in (2015) 16 SCC 530.

12. Whereas per contra, the learned counsel Mr.A.R.Karunakaran appearing for the 3rd respondent would submit that the petitioner joined in the 3rd respondent school in the year 2008. In her reply she has specifically mentioned that she corrected the child. This matter involves a



W.P.No.5663 of 2015

termination of a teacher working in a private school. There is no public law element involved in this case, therefore writ would not lie and distinguished the above said judgments. Therefore, these case laws would not apply to the fact of this case.

13. To buttress his arguments, the judgment passed in W.P.No.30379 of 2015 dated 19.10.2022 in K. Muralidoss Vs. The Correspondent, Asan Memorial College of Engineering & Technology and others was referred to.

14. The learned Senior Counsel Mr.V. Raghavachari by referring the judgments rendered in *St.Mary's Education Society case* put fourth that even the 3rd respondent being a Educational Institution which is imparting public duty, the act complained of must have direct nexus with the discharge of public duty. He would further contend that it is indisputably a public law action which confers a right upon the aggrieved to invoke the extra ordinary writ jurisdiction under Article 226 of the Constitution of India.

15. Reference was made to the judgment of the Hon'ble Full Bench of this Court rendered in W.P.No.304272 of 2022 date 29.02.2024 made in D.Bright Joseph Vs. Church of South India (CSI) and others. The learned



W.P.No.5663 of 2015

Senior Counsel would draw the attention of this Court to para 24 (iii) of the said judgment, wherein, it was held by the Hon'ble Full Bench that "Since the Educational Institution run by 1st and 2nd respondents (CSI) both aided and unaided, are bound by statutory regulations of varying degrees, they are amenable to the writ jurisdiction". Based on the said analogy, the 3rd respondent being an Educational Institution though it is an unaided institution it is amenable to the writ jurisdiction. *Marwari Balika Vidyalaya* case was also referred in order to contend that even if the writ petition is filed against private unaided school it is held to be maintainable.

16. The Hon'ble Supreme Court in *Marwari Balika Vidyalaya vs. Asha Shrivastava* reported in (2020) 4 SCC 449 has observed as follows:-

"...the most important distinguishing feature of the case of *Marwari Balika Vidhyalaya* case is that in the said case, the removal of the teacher from service was subject to the approval of the State Government. The State Government took a specific stance before this Court that its approval was required both for the appointment as well as removal of the teacher. In the case on hand, indisputably, the Government or any other agency of the Government has no role to play in the termination of the 1st respondent herein."



W.P.No.5663 of 2015

17. In *Marwari Balika Vidhyalaya* case, the school was receiving grant-in-aid to the extent of dearness allowance. The appointment as well as the removal are required to be approved by the District Inspector of School (Primary Education), therefore it was held that if any action is taken dehors such mandatory provision, the same would not come within realm of private element and the Hon'ble Supreme Court held that writ would lie.

18. For the following reasons, the Hon'ble Supreme Court held that in *Janet Jeyapaul Vs. SRM University and others* reported in (2015) 16 SCC 530, the SRM University is amenable to writ jurisdiction.

- i. The university is engaged in imparting education in higher studies to students at large.
- ii. It is discharging "*Public function*" by way of imparting education.
- iii. It is notified as a "*Deemed University*" by the Central Government under Section 3 of the UGC Act.
- iv. Being a "*Deemed University*", all the provisions of the UGC Act are made applicable to the SRM University.
- v. Then it is an "*authority*" within the meaning of Article 12 of the Constitution.
- vi. Once it is an "*authority*" as provided in Article 12 then as a necessary consequence, it becomes amenable to writ



W.P.No.5663 of 2015

jurisdiction of the High Court under Article 226 of the Constitution.

WEB COPY

19. In *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust Vs. V.R. Rudani* reported in (1989) 2 SCC 691, the Hon'ble Apex Court had opined that while deciding the issue of maintainability it is always to test as to whether the body concerned is formed for discharging any “*public function*” or “*public duty*” and if so, whether it is actually engaged in any public function or/and performing any such duty.

20. It is relevant to refer to the observations made by the Hon'ble Supreme Court in *St. Mary's Education Society* case wherein it has been held that

“... 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



W.P.No.5663 of 2015

WEB COPY

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...”

21. The law is well settled that a writ under Article 226 of the Constitution would lie against a person or a body discharging public duties or public functions. Of course, educational institution imparts education which comes under the purview of public duty. It is all the more important that nature of the act complained of should be looked into. It should have a direct access with the discharge of public duty. There cannot be any second opinion that a public law action confers a right upon the aggrieved to invoke the writ jurisdiction under Article 226 of the Constitution. Of course the 3rd respondent school is performing public duty, the actions



22. Based on the aforesaid observations and discussions, this writ petition stands dismissed. However, the petitioner is at liberty to seek her remedy before the appropriate forum. No costs. Connected Miscellaneous Petitions if any stands closed.

24.04.2024

Page No.12/14



W.P.No.5663 of 2015

WEB COPY

- To
1. The Regional Office,
CBSC – Chennai,
Plot N. 1630-A, 'J' Block,
15th main road, Anna Nagar West,
Chennai – 600 040.
 2. The Disciplinary Appeal Committee,
Asan Memorial Education Institution,
No.1, Anderson Road,
Cochin House, Chennai – 6,
 3. The Principal,
Asan Memoria Educational Institutions,
No.1, Anderson Road,
Cochin House, Chennai – 6.



WEB COPY



W.P.No.5663 of 2015

R.KALAIMATHI, J.

mac

W.P.No.5663 of 2015

24.04.2024