

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

123

CWP-6228-2024
Date of Decision: 15.03.2024

Ex Hony Sub Maj Rajnish Kumar Minhas ...Petitioner

Versus

Union of India and others ...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Ramneek Vasudeva, Advocate for the petitioner
Mr. Karan Kumar Jund, Senior Panel Counsel,
for Union of India-respondent Nos.1 to 4

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of letter dated 19.02.2024 (Annexure P-10) whereby respondent has ordered to terminate his services w.e.f. 16.03.2024.
2. The petitioner is an Ex-Serviceman who had retired from Indian Army. The petitioner, pursuant to an advertisement, applied for the post of Assistant Manager (Marketing) at Regional Business Development Centre, Pathankot of respondent No.2 i.e. Army Welfare Placement Organization, Jalandhar. The period of contract was one year. The respondent renewed the said contract from 01.04.2023 to 31.03.2024. The respondent, despite impeccable record and above the board performance of the petitioner, by impugned letter dated 19.02.2024 (Annexure P-10) ordered to terminate

service of the petitioner. He has been given one month notice, thus, contract of the petitioner would come to an end on 16.03.2024.

3. On being asked, Mr. Ramneek Vasudeva, Advocate conceded that respondent is a society registered under Societies Registration Act, 1860, however, pleaded that in view of order dated 12.01.2024 passed by Division Bench of this Court of this Court in *LPA No.1476 of 2023*, the present writ petition is maintainable against the respondent.

4. In view of order dated 12.01.2024 passed by Division Bench of this Court, the writ petition is maintainable against the respondent, however, the contents of the petition and prayers of the petitioner need to be examined in the light of recent judgment of Supreme Court in ***St. Mary's Education Society and another v. Rajendra Prasad Bhargava and others, (2023) 4 SCC 498***. A Two Judge Bench of Supreme Court has held that writ petition under Article 226 is maintainable against an educational institution, however, writ is not maintainable if action of the institution does not involve public law. Issue arising out of the contract between an employee and employer like termination, promotion or remuneration do not involve public law, thus, writ against order of termination is not maintainable. The relevant extracts of the judgment read as:

“54. Thus, the aforesaid order passed by this Court makes it very clear that in a case of retirement and in case of termination, no public law element is involved. This Court has held that a writ under Article 226 of the Constitution against a private educational institution shall be maintainable only if a public law element is involved and if there is no public law element is involved, no writ lies.

XXXX XXXX XXXX

66. Merely because a writ petition can be maintained against the private individuals discharging the public duties and/or public functions, the same should not be entertained if the enforcement is sought to be secured under the realm of a private law. It would not be safe to say that the moment the private institution is amenable to writ jurisdiction then every dispute concerning the said private institution is amenable to writ jurisdiction. It largely depends upon the nature of the dispute and the enforcement of the right by an individual against such institution. The right which purely originates from a private law cannot be enforced taking aid of the writ jurisdiction irrespective of the fact that such institution is discharging the public duties and/or public functions. The scope of the mandamus is basically limited to an enforcement of the public duty and, therefore, it is an ardent duty of the court to find out whether the nature of the duty comes within the peripheral of the public duty. There must be a public law element in any action.

XXXX XXXX XXXX

75. We may sum up our final conclusions as under:

75.1. An application under Article 226 of the Constitution is maintainable against a person or a body discharging public duties or public functions. The public duty cast may be either statutory or otherwise and where it is otherwise, the body or the person must be shown to owe that duty or obligation to the public involving the public law element. Similarly, for ascertaining the discharge of public function, it must be established that the body or the person was seeking to achieve the same for the collective benefit of the public or a section of it and the authority to do so must be accepted by the public.

75.2. Even if it be assumed that an educational institution is imparting public duty, the act complained of must have a direct nexus with the discharge of public duty. It is indisputably a

public law action which confers a right upon the aggrieved to invoke the extraordinary writ jurisdiction under Article 226 for a prerogative writ. Individual wrongs or breach of mutual contracts without having any public element as its integral part cannot be rectified through a writ petition under Article 226. Wherever Courts have intervened in their exercise of jurisdiction under Article 226, either the service conditions were regulated by the statutory provisions or the employer had the status of “State” within the expansive definition under Article 12 or it was found that the action complained of has public law element.

75.3. It must be consequently held that while a body may be discharging a public function or performing a public duty and thus its actions becoming amenable to judicial review by a constitutional court, its employees would not have the right to invoke the powers of the High Court conferred by Article 226 in respect of matter relating to service where they are not governed or controlled by the statutory provisions. An educational institution may perform myriad functions touching various facets of public life and in the societal sphere. While such of those functions as would fall within the domain of a “public function” or “public duty” be undisputedly open to challenge and scrutiny under Article 226 of the Constitution, the actions or decisions taken solely within the confines of an ordinary contract of service, having no statutory force or backing, cannot be recognised as being amenable to challenge under Article 226 of the Constitution. In the absence of the service conditions being controlled or governed by statutory provisions, the matter would remain in the realm of an ordinary contract of service.

75.4. Even if it be perceived that imparting education by private unaided school is a public duty within the expanded expression of the term, an employee of a non-teaching staff engaged by the school for the purpose of its administration or internal management is only an agency created by it. It is

immaterial whether “A” or “B” is employed by school to discharge that duty. In any case, the terms of employment of contract between a school and non-teaching staff cannot and should not be construed to be an inseparable part of the obligation to impart education. This is particularly in respect to the disciplinary proceedings that may be initiated against a particular employee. It is only where the removal of an employee of non-teaching staff is regulated by some statutory provisions, its violation by the employer in contravention of law may be interfered with by the Court. But such interference will be on the ground of breach of law and not on the basis of interference in discharge of public duty.

75.5. From the pleadings in the original writ petition, it is apparent that no element of any public law is agitated or otherwise made out. In other words, the action challenged has no public element and writ of mandamus cannot be issued as the action was essentially of a private character.”

5. In the case in hand, the respondent is concededly an Educational Society. In view of order dated 12.01.2024 passed by Division Bench of this Court in *LPA No.1476 of 2023*, the said society is amenable to writ, however, every action of said society is not amenable to writ jurisdiction of this Court. The petitioner is assailing letter dated 19.02.2024 (Annexure P-10) whereby respondent has terminated his services. It is conceded by the petitioner that there are no statutory rules governing his service. There is only an internal policy of the respondent which governs service of the petitioner. In the absence of any statutory provision, this Court in view of judgment of Supreme Court in *St. Mary’s Education Society (supra)* cannot examine legality of impugned termination order.

6. In the wake of above discussion and findings, this Court does not find it appropriate to invoke its writ jurisdiction. The petitioner is at liberty to avail remedies as permissible by law.

(JAGMOHAN BANSAL)
JUDGE

15.03.2024
Mohit Kumar

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