



2024:DHC:3671



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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 29.04.2024

+ W.P.(C) 7857/2007

ARUNIMA BARUAH

..... Petitioner

versus

THE SECRETARY GENERAL

INDIAN COUNCIL FOR CHILD WELFARE ..... Respondents

**Advocates who appeared in this case:**

For the Petitioner : Ms. Lata Krishnamurthi and Dr. Sumit Kumar, Advocates

For the Respondent : Ms. Saroj Tripathi, Advocate

**CORAM:****HON'BLE MR. JUSTICE TUSHAR RAO GEDELA****JUDGMENT****TUSHAR RAO GEDELA, J. (ORAL)****[ The proceeding has been conducted through Hybrid mode ]**

1. This is a writ petition under Article 226 read with Articles 14 and 21 of the Constitution of India as also Section 151 of CPC, 1908 *inter alia* seeking the following reliefs:-

*“(a) the said impugned order of termination dated 19/3/01 be quashed and set aside and the Respondent be directed to reinstate the Petitioner as though there has been no break in her services;*

*(b) give full continuity of service as well as the salary for the years during which she has been unemployed.*



*(c) Pass such other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."*

2. At the outset, Ms. Lata Krishnamurthi, learned counsel for the petitioner submits that all that the petitioner seeks is quashing of the impugned order of termination dated 19.03.2001 and does not want any reinstatement. In fact, she submits that the petitioner prays for a cost to be imposed by the respondent for harassing the petitioner and making her run from pillar to post.

3. The case of the petitioner is that on 01.08.1995, the petitioner was inducted as a Librarian in the Indian Council of Child Welfare (ICCW) and was appointed by the Standing Committee. The petitioner asserts that the testimonials, in original, in respect of her qualifications were also submitted for consideration of the Standing Committee. After almost a year, on 16.08.1996, the services of the petitioner were confirmed as Librarian. It is asserted that on 14.07.1996, the petitioner received appreciation from the Chairman of the respondent.

4. The petitioner submits that being a Librarian, she was made to work in other aspects as well and wherever there were Seminars etc., she was given the task of a Representative of ICCW, i.e. the respondent.

5. She submits that on 19.08.1999, the petitioner had to urgently leave the office, inasmuch as she was in the late stages of her pregnancy and had to get herself admitted in the hospital. It is also stated that the petitioner gave birth to a baby girl on the next day. The petitioner, thereafter joined the services after three months of statutory maternity leave and continued as such.



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6. She also claims that on 04.10.2000, she received a certificate for participation in the International Conference on Asia Pacific held at Delhi.

7. While the petitioner was in service of the respondent, *vide* the reminder letter dated 28.12.1999 referring to the Office Memo dated 15.12.1999 the respondent had directed the petitioner to submit her academic testimonials for verification, which according to the memo, was not submitted by her till date. The said reminder was followed by other reminders on 21.01.2000, 31.01.2000 and 07.02.2000.

8. Subsequently, by the Office Memorandum dated 19.03.2001, the respondent had, while leveling various charges against the petitioner terminated the services of the petitioner by one month's notice, in accordance with the terms of the engagement of the services of the petitioner and the minutes of the Standing Committee's meeting held on 19.12.2000. The petitioner had submitted her detailed representation against OM on 28.03.2001. The respondent-ICCW *vide* the letter dated 09.04.2001 had rejected the said representation and reiterated the termination by one month's notice given to the petitioner *vide* the OM dated 19.03.2001.

9. This Court has heard the arguments of Ms. Krishnamurthi, learned counsel for the petitioner as also Ms. Saroj Tripathi, learned counsel for the respondent, perused the documents on record and considered the judgments relied upon by the parties.

10. It is undisputed that the petitioner was inducted into service *vide* the letter dated 01.08.1995. The controversy regarding the allegation of non-submission of the original testimonials for verification has been



raised by the respondent, which is clear from the various reminder letters given to the petitioner *vide* the letters dated 28.12.1999, 21.01.2000, 31.01.2000 and 07.02.2000. Though the OM dated 19.03.2001 also referred to the non-submission of testimonials for verification, however, the same appears to be a bogey raised only for the purpose of terminating the services of the petitioner. This is for the reason that *vide* the letter dated 01.08.1995 issued by one Mr. S.D. Sharma, it is clear that the testimonials submitted by the petitioner were received and compared with the photocopies. It further also reiterates that the original testimonials may be returned to her. Whether the testimonials were returned to her or not is not an issue to be decided in the present case. What is relevant is that there is a letter which acknowledges that the petitioner had, on 01.08.1995, when she was originally inducted into services, handed over the original testimonials for verification, which indeed was carried out as per the letter dated 01.08.1995.

11. Ms. Tripathi, learned counsel for the respondent had refuted the said letter on the ground that there is no intra-departmental letter issued on letter head and that Mr. S.D. Sharma was not the PA. Though, it is admitted that he was the OSD of the respondent at the relevant time.

12. The respondent has not placed on record any affidavit of Mr. S.D. Sharma or any other document to show that the said Mr. S.D. Sharma was not competent to issue any such letter. In all probability, the admission that Mr. Sharma was an OSD, palpably appeal to reason that the said letter must be issued by such person. Moreover, a copy of the said document was communicated to the Administration Section as well



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as the Personal File. Both the files being in the custody of the respondent, it would have been convenient for the respondent to have produced the same before this Court or any document contrary thereto. No such action has been taken by the respondent till date.

13. That apart, the issue with respect to the petitioner having abandoned the office without handing over the almirah keys becoming a part of the charges levelled in the OM is concerned, the petitioner has placed on record the birth certificate of her daughter dated 20.08.1999 in order to support her submission that it was on an emergent reason that the petitioner had to leave the office. No contrary argument to such submission has been urged by the counsel for the respondent in this regard.

14. Moreover, if there was any truth in the allegations, there is no reason as to why the said allegations would not have formed part of the Memos/Reminder Memos issued to the petitioner, as noted above. The said Memos are conspicuous by the absence of any reference whatsoever to the alleged abandonment of the office or the services of respondent on 19.08.1999.

15. Thus, on examining the said issue, it appears that as on 19.03.2001 when the impugned Memo was issued to the petitioner, atleast so far as the issue of abandonment of services is concerned on 19.08.1999, there is no substance in such allegations. That apart, it would be apposite to extract the OM dated 19.03.2001 as issued to the petitioner, which is as under:-

*“INDIAN COUNCIL FOR CHILD WELFARE  
4-Deen Dayal Upadhyaya Marg,  
New Delhi-110 002      Date 19.03.2001*



*Patron-in-Chief  
Shri K. R. Narayanan  
President of India*

*Office Memorandum*

*You, Smt. Arunima Baruah, were appointed as a Librarian in the ICCW Library w.e.f.22.2.1995 to 30.6.95 on a consolidated salary of Rs. 2500/- per month. W.e.f. 1.7.95, you were put in a regular scale at a basic salary of Rs. 2000/- in the scale of Rs. 2000-60-2300-EB-75-3200-100-3500 vide No. ICCW/95/90 of 1.8.95 which was revised to Rs. 6500-200-10,500 w.e.f. 1.4.99.*

*The appointment was made on the basis of the qualifications claimed by you.*

*In your application sent from Gauhati, you gave your qualifications & experiences as under: B.Sc. B.A., B. Lib. & Information Science and Diploma in journalism. You indicated your date of birth as 1963 without giving exact date and working in K. K. Handique Library under Gauhati University.*

*When a verification of all personal files of the members of staff was made last year staff was made last year before submitting to the Audit party, it was noticed that there was no copy of testimonials of your qualifications and experiences available in your personal file, neither any indication that you ever submitted the same to this office.*

*As such, you were asked on 28-12-99 to submit a copy each of your testimonials regarding experiences and qualifications for our record along with you exact date of birth, with reminders on 21-1-2000, 31-1-2000, 7-2-2000, 7-9-2000 and 11-12-2000. You have not cared to submit the same till date. You can not deny our right to ask for any document for official requirement and one is supposed*



*to submit the same within a reasonable period of time.*

*Further you went on maternity leave w.e.f. 20.8.99 without handing over the keys of the almirah where Library registers were kept. You were asked to hand over the keys. Registered letter and copy by ordinary post in this regard were sent to your known address, but returned to us without delivery as you were not available at the given address. ICCW faced much difficulties without registers and you joined on 19.11.99 after 3 months. This lapse on your part was viewed seriously. All these show your utter disregard for office discipline and lack of commitment to office duties.*

*2. One of the conditions of your appointment vide your appointment letter of 1.8.95 was to maintain the Accession Register. You informed to the inspecting staff during 1999 that you started Accession Register w.e.f. 7-7-96 (you joined on 22.2.95) and the new Accession Register started with serial no. 4626. It is not understood how you were verifying all these years of the books with serial nos. 1 to 4625.*

*During inspection of the Library records, it was found that:*

*a. Journal register (subscribed) and Journal register (free copy), loan Register are not being maintained properly.*

*b. Library caution money register for outsiders has not been maintained at all. No register is maintained for collecting fines for delay in returning loaned books.*

*c. Physical verification of books show discrepancies.*

*d. There was no Library rules in existence. You did not care to initiate action in this regard during your last 5 years in the Library. When a draft Library rules for the ICCW Library as approved by the Chairman Library Sub*



*Committee and subsequently vetted by Executive Committee in its meeting held on 28-7-2000 was given to you for implementation, you have not put in operation the same till date.*

*On an experimental basis, compute cataloguing was made of 1000 books by ET&T in May 1998 You were given full time training in Computer Cataloguing by ET&T for 2 weeks in September'97. You are aware that we purchased one software package from the Deptt. Of Science & Technology for Computerisation of Library records on 18.9.97 which is lying with you. We have got two Computers and Computer Operator but till date you have not initiated any work in this regard.*

*Whenever staff ask for 'no dues certificate' from the Library as per requirement, your records are found to be incomplete and the Admn. is hard put to sort out the problem created you.*

*These show your inefficient and utterly non-professional handling of the Library. It is learnt that book suppliers submitted during Feb/March,2000 to the Library many books for selection and purchase without any written request from the Library. On 29.3.2000 you submitted a list to the Chairman, Library Sub-Committee, when she visited the Library. It was not clear from the note what were the books you put to her. It seems that she was under the impression that the list was first submitted to the Programme Officers for their suggestions.*

*In this connection, kindly refer to the decision of the Library Sub-Committee meeting held on 14.4.95 and office order no. ICCW/Admn/97 of 8.4.97 (duly received by you on 9.4.97) which is reproduced below:*

*"No.ICCW/Admn/97*

*Dated 8.4.97*



**SUB: PURCHASE OF BOOKS FOR LIBRARY**

*Whenever books are to be purchased for the Library, the Librarian may kindly get the suggestions from different Programme Officers for submission to the Library Sub Committee before finalizing the purchase.*

*After purchase the list of books purchased should be displayed in the Notice Board and another list should be circulated to different sections.*

*This is as per direction of the Secretary General.*

*Sd/- Admn. Officer”*

*As directed by the undersigned on your note of 29.3.2000, a list of seventy two books were submitted to the Prog. Officers who recommended ( on 7.4.2000) 48 books and rejected 24 books out of the above 72 books.*

*The undersigned further directed in writing on your note that final selection of books should be done depending upon the amount available under the budgeted head and negotiation should be made for maximum discount with the publishers.*

*When the publishers were called for price negotiation, it was learnt that all the 72 books were stamped thus precluding any further price negotiation as the publishers flatly refused to take back the stamped books which were not recommended for purchase and not offering more than 10 % discount on their printed price of books.*

*As you know we paid for the 48 books which were selected by all but ICCW was burdened with a pending amount of Rs.21,509/- for unapproved books which you stamped irresponsibly by not following any basic rules of book purchase for a Library.*



*ICCW has been facing great embarrassment from the publishers day in and day out and saddled with a pecuniary liability for a substantial amount due to your mischievous act in stamping before final approval through due procedure.*

*In view of all above, the 1<sup>st</sup> Standing Committee meeting held on 19.12.2000 decided to terminate your services with ICCW and to issue one month's notice to you. The above decision of the Standing Committee was confirmed by the 2<sup>nd</sup> Executive Committee meeting held on 22.1.2001.*

*In pursuance of the above decision and in terms of para IX of your appointment letter dated 1.8.95, one month's prior notice terminating your services in ICCW as Librarian is served through this letter.*

*As such, your services stands terminated accordingly w.e.f April, 19, 2001.*

*You should acknowledge receipt of this office memorandum and hand over all your charges of the Library before departure and submit different 'no dues certificates' to the office for release of your dues.*

*Sd/ (Smt.) Gita Siddhartha  
SECRETARY GENERAL*

*To,  
Smt. Arunima Baruah/Librarian  
ICCW  
New Delhi-110002  
CC Accounts Section  
Admn Section  
Personal file"*

16. The point which comes to fore, while examining the said OM is  
(i) that though there is no Memo issued to her on the question of Maternity Leave, the same was made a part of the OM terminating the



petitioner without even calling for an explanation from her at the relevant point in time; (ii) the respondent has included within the ambit of the said OM, other issues on which she also was not issued any show cause notice. The OM is designed to appear as if it is a show cause notice, however, in the penultimate paragraph, all it does is to terminate the services of the petitioner with a one month notice, which was to come into effect from 19.04.2001.

17. Though the petitioner, by the reply dated 28.03.2001, had given her detailed representation against such OM, however, by the letter dated 09.04.2001, in a perfunctory manner, the said explanations were rejected and the decision to terminate the services in terms of the OM dated 19.03.2001 were reiterated.

18. It is obvious that while considering the reply, the respondent had not applied their mind to the same since it was already predetermined to terminate the services of the petitioner. This is clear from a comparison of the OM dated 19.03.2001 with the letter dated 09.04.2001. It would be therefore, appropriate to extract letter dated 09.04.2001, which is as under:-

“Gram: CHILCARE                      323-6616 (President)  
Telephone: 323-2427 (Secy. Genl)  
323-9539 (Office)  
Fax: 91-011-3232427

INDIAN COUNCIL FOR CHILD WELFARE  
4, Deen Dayal Upadhyaya Marg, New Delhi – 110002

ICCW/Admn./2001/18

Date : 9.4.2001

Patron-in-chief  
Shri K.R. Narayanan



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*President of India*

*To  
Smt. Arunima Baruah  
Librarian  
Indian council for Child Welfare  
New Delhi – 110002*

*Sub: Your representation dated 28.3.2001 (received here by speed post on 29.3.2001) against the notice of termination dated 19.3.2001.*

*Our President, Smt. Andal Damodaran, gave you're a patient hearing when you met her in her office. She advised you to show the certificates in original, if you have any, to the Administration. So far this has not been complied with.*

*Regarding key to the cupboard in which the library records were kept. You kept by cupboard locked during your maternity leave for three months. You refused earlier to let us get a duplicate key made since you stated that your personal belongings were kept therein.*

*Even in your reply dated 8.2.2000 to the office memo issued to you, you said that, "my personal belongings, my cash, my purse was inside the almirah". You also wrongly stated that, "all the materials pertaining to the library was kept outside". Your assistant in the library searched the library during your absence for maternity leave and did not find the required registers.*

*When you came back from maternity leave on 19 Nov. 1999, you yourself admitted verbally that the registers were in the locked cupboard. Only thereafter under instructions, a duplicate key of the cupboard was made as can be proved by our office records.*

*Regarding Accession Register, your explanation is incorrect. There was at all times an Accession Register*



*maintained in the Library. Annually you have carried out verification of library books. This can only be done with reference to the Accession Register. Therefore for you to now state that there was no Accession Register is an incorrect representation of facts.*

*Regarding your reply to para 2 (a,b,c,d), your explanation is vague, to say the least. You have not yet intimated us when you started implementing the library rules as approved by the Executive Committee.*

*Regarding computerization of library records, your explanations are not acceptable. You have never reported to us any requirements. The Computer facilities were always available.*

*Regarding your reply to para 3, it may reiterated that your explanations are not acceptable and the office has been put to great harassment by your handling of the whole issue of purchase of books for the library which is in total contravention of all procedures laid down for procurement.*

*We again reiterate that your representations do not merit any reconsideration of the stand of the Standing and Executive Committee and the decision contained in our Office Memorandum dated 19.3.2001 terminating your services w.e.f. 19 April 2001 stands.*

*Please acknowledge receipt of this letter.*

*Yours faithfully,  
Sd/-*

*(SMT.) GITA SIDDHARTHA  
SECRETARY GENERAL”*

19. Another issue which was raised as an objection on behalf of the respondent was the maintainability of the present writ petition as the



respondent claims to be not a 'State' under Article 12 of the Constitution of India, 1950. The relevant paragraphs of the objections, as brought out in the counter affidavit are from para 3 to 6 of the Preliminary Submissions which are as under:-

*"3. That the Respondent Council is not "State" as understood under Article 12 of the Constitution of India and therefore not amenable to the Writ Jurisdiction of this Hon'ble Court under Article 226 of the Constitution of India and as such the present writ petition is not maintainable and is liable to be dismissed on this ground alone.*

*4. That the services of the Petitioner with the Respondent Council are governed by a contract entered into between the Petitioner and the Respondent Council. It is well settled that contractual disputes between private bodies cannot be subject matter of a writ petition as the remedy under Article 226 of the Constitution cannot be invoked for resolution of a private law dispute and therefore the dispute regarding termination of services of the Petitioner is not amenable to writ jurisdiction of this Hon'ble Court. It is also well settled that an application for mandamus will not lie for an order of reinstatement to an office which is essentially of a private character.*

*5. It is further submitted that the dispute regarding termination of services of the Petitioner involves various disputed question questions of fact and therefore cannot be adjudicated in the present writ proceedings under Article 226 of the Constitution.*

*6. It is further submitted that the terms and conditions contained in the letter of appointment dated 1.8.1995 governs the services of the Petitioner and in accordance with the said letter of appointment the Respondent Council has given a month's notice to the Petitioner while*



*terminating her services and she stood relieved of her services with effect from 19.4.2001.”*

20. The issue in respect of whether the present writ petition under Article 226 of the Constitution of India, 1950 can be maintained against an Institution like the respondent is concerned, various judgments would appear to be in favour of the respondent. However, the judgment of the Constitution Bench of the Supreme Court in ***Kaushal Kishore vs. State of Uttar Pradesh and Others*** reported in (2023) 4 SCC 1, extended the ambit of Article 226 of the Constitution of India to Institutions which may not be covered under the definition of Article 12 of the Constitution of India, in the classic sense.

21. In fact, the Supreme Court had, in para 6 of the aforesaid decision, framed five questions out of which question nos. 2 and 3 would probably be relevant to the present issue. The same are as under:-

*“(2) Can a fundamental right under Article 19 or 21 of the Constitution of India be claimed other than against the “State” or its instrumentalities?*

*(3) Whether the State is under a duty to affirmatively protect the rights of a citizen under Article 21 of the Constitution of India even against a threat to the liberty of a citizen by the acts or omissions of another citizen or private agency?...”*

22. Ms. Krishnamurthi, learned counsel for the petitioner was at pains in taking this Court to the judgment particularly, paras 81.14 , 81.16, 83 and 89 to submit that the obligation of the State now is taken as a horizontal right which casts an obligation on the State to see that such Fundamental Rights of the citizens of this Country are not violated by



the non-State actors too. In other words, the petitioner who was employee of the respondent, ought to have been given that protection of her Fundamental Rights.

23. The observations of the Supreme Court in para 81.16 would gather relevance in the aforesaid terms, which is extracted hereunder:-

*“81.16. In Zee Telefilms Ltd. v. Union of India [Zee Telefilms Ltd. v. Union of India, (2005) 4 SCC 649], this Court held that though BCCI does not fall within the purview of the term “State”, it discharges public duties and that therefore even if a remedy under Article 32 is not available, the aggrieved party can always seek a remedy before the ordinary courts of law or by way of a writ petition under Article 226. This Court pointed out that the violator of a constitutional right could not go scot-free merely because it is not a State. The said logic was extended by this Court to a “Deemed to be University” in Janet Jeyapaul v. SRM University [Janet Jeyapaul v. SRM University, (2015) 16 SCC 530 : 8 SCEC 68] , on the ground that though it is a private university, it was discharging “public functions”, by imparting education.”*

24. The other relevant observation of the Supreme Court is contained in para 83 of its judgment, which is also extracted hereunder:-

*“83.....The original thinking of this Court that these rights can be enforced only against the State, changed over a period of time. The transformation was from “State” to “Authorities” to “instrumentalities of State” to “agency of the Government” to “impregnation with Governmental character” to “enjoyment of monopoly status conferred by State” to “deep and pervasive control” [Ramana Dayaram Shetty v. International Airport Authority of India, (1979) 3 SCC 489] to the “nature of the duties/functions performed” [Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani, (1989) 2 SCC 691] .*



*Therefore, we would answer Question 2 as follows:*

*“A fundamental right under Articles 19/21 can be enforced even against persons other than the State or its instrumentalities.”*

25. Consequent to those observations, the Supreme Court had held that the Fundamental Rights under Articles 19 and 21 of the Constitution of India, 1950 can be enforced even against persons other than the State or its instrumentalities. The Supreme Court, while dilating on question No.3 also held that the maintainability of Article 226 has evolved over the past decades and has now also shifted its focus to that of the nature of duties and functions performed by a particular Institution and to then find out whether it is amenable to the jurisdiction under Article 226 of the Constitution of India.

26. It is clear from the aims and objectives of the Respondent Council, as mentioned in the counter affidavit, that the respondent is working in the field of child welfare & development which is undoubtedly in the nature of a ‘public function’. For clarity, the aims and objectives of the Respondent Council are extracted hereunder:

*“The aims and objectives of the Respondent Council are; -*

*a) To initiate, undertake or aid directly or through its State / U.T councils or affiliated bodies, schemes for furtherance of child welfare / development in India;*

*b) To support wherever possible, and guide the progress of any approved schemes of child welfare / development which may already exist;*

*c) To organize and maintain institutions for the training of child welfare / development workers and to encourage*



*their employment for child welfare / development work;*

*d) To help, wherever possible, in the extension of facilities for courses of special training in child welfare / development in the existing institutions;*

*e) To establish a Central Bureau for the study and collection of data and statistics, in respect of child welfare / development work;*

*f) To publish studies, treatise, books, periodicals, reports and other literature relating to child welfare / development;*

*g) To promote dissemination of knowledge and information and to educate public opinion for child welfare / development programmes on a scientific basis.*

*h) To arrange for the holding of periodical conferences and seminars on child welfare development;*

*i) to promote enactment of legislation and reform in existing laws relating to matters concerning children and their welfare and work towards the formulation of a national charter for children and implementation of its provisions;*

*j) To promote generally the welfare of children in India having regard to their social, economic and other needs;*

*k) To promote establishment or formation of State Councils or Union Territory Councils with similar aims and objectives and to provide for their affiliation to the Council;*

*l) To promote, establish and recognize societies or associations with similar objectives within the territories of the Republic of India and enter into agreement with other organizations for their affiliation to or*



*amalgamation with the Council;*

*m) To co-operate with national and international organizations having similar objectives and to depute or receive representatives to and from such organizations;*

*n) To cooperate with other agencies both governmental and non-governmental in the organization and administration of schemes and funds for furtherance of child welfare /development in India;*

*o) To send delegates or observers to national and international conferences on child welfare / development or allied matters;*

*p) To receive grants, donations, fees or subscription and to manage and administer the funds at the disposal of the Council;*

*q) To acquire, receive and hold property both movable and immovable including securities and negotiable instruments.*

*r) To purchase, construct, manage and alter buildings and to equip them suitably for the purpose of the Council;*

*s) To manage, sell, transfer, ledge or otherwise dispose off or deal with property of any kind which may be at the disposal of the Council;*

*t) To enter into contracts for an in connection with the pursuance of any of the purpose of the Council;*

*u) To raise moneys and funds by borrowing or otherwise as may be deemed fit for and on behalf of the Council;*

*v) To perform all such acts as may be necessary or property for the achievement of any or all of the objectives of the Council.”*



27. Placing the same in the context of the present petition, it is apparent that there has been a violation of the Principles of Natural Justice. In that, while the original Memo issued in the year 1999 referred to the mere non-submission of testimonials for verification by the respondent, had flowered itself into a number of allegations which hitherto before the OM dated 19.03.2001 were never levelled against the petitioner.

28. In that sense of the term, the Principles of Natural Justice coupled with the fundamental rights under Articles 19 and 21 of the Constitution of India appears to have been violated. It is only in that sense that this Court is propelled to consider the present writ petition as maintainable.

29. Ordinarily, this Court would have not interfered, keeping in view the ratio of the judgment laid down by the Supreme Court in *St. Mary's Education Society & Anr. vs. Rajendra Prasad Bhargava & Ors.* reported in (2023) 4 SCC 498. The said judgment has clearly delineated the functions of the Institution on one hand and in contrast with finding out as to whether the terms of the employment of the employee *qua* the Institution are bound by any Statutory Rules, Regulation or any Act and held that only in cases of infringement thereof, the powers under Article 226 of the Constitution of India can be exercised.

30. In that view of the matter, the submissions of the respondent regarding the maintainability, particularly in paras 3 to 6 of the counter affidavit, would not come to the rescue of the respondent.

31. The judgment of the Constitution Bench of the Supreme Court in *Kaushal Kishore (supra)* goes way beyond the objections raised in the aforesaid paragraphs of the counter affidavit. It is not just the tests laid



down by the Supreme Court in *Pradeep Kumar Biswas vs. Indian Institute of Chemical Biology* reported in (2002) 5 SCC 111 and *Balco Employees' Union (Regd) vs. Union of India & Ors* reported in (2002) 2 SCC 333, which are to be now considered as the benchmark to determine the maintainability of a particular writ petition.

32. The judgment of the Supreme Court in *Kaushal Kishore (supra)* has considered those judgments and given a far more wider definition as to which of the Institutions would also get covered by Article 12 of the Constitution of India.

33. On facts, this Court finds that no Show Cause Notice or Memo in regard to charges other than not having submitted her testimonials was ever issued, coupled with the fact that additional charges were issued *vide* the memo dated 19.03.2001, without any prior notice/memo. The said memo is quashed on that ground. Even the letter dated 09.04.2001 rejecting the representation is mere repetition of the memo dated 19.03.2001 and reflects non-application of mind.

34. In view of the fact that the petitioner is restricting her claim only to the quashing of the OM dated 19.03.2001, as a consequence of the aforesaid reasons and findings, the said impugned order dated 19.03.2001 is quashed and set aside.

35. The petitioner would have otherwise ordinarily been entitled to the consequential reliefs but for the statement of learned counsel for the petitioner. However, this would not preclude the Court from directing payment of costs to the petitioner.

36. In that view of the matter, this Court is of the considered opinion that the petition is allowed with costs of Rs.1,50,000/- in favour of the



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petitioner to be paid by the respondent within eight weeks from today.

37. The petition is disposed of in above terms alongwith pending applications.

38. This judgment has been passed in the peculiar facts arising in this case and the restricted prayers of the petitioner and shall not, therefore, be treated as a precedent.

**TUSHAR RAO GEDELA, J**

**APRIL 29, 2024**

*Aj*