

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9233 of 2020

1. Bijay Kumar @ Vijay Kumar Son of Sri Shyam Nandan Sharma, Resident of Village- Hanuman Nagar, Maranpur, Police Station-Vishnupad, District-Gaya.
2. Jai Ram Singh Son of Sri Dikpal Singh Resident of Mohalla-Siddharth Puri Colony, Road No.1, Manpur, Police Station-Muffassil, District-Gaya.
3. Awadhesh Poddar Son of Late Uchit Poddar, Resident of Mohalla-New Taridih, Police Station-Bodhgaya, District-Gaya
4. Nirmal Yadav Son of Late Sukhdeo Yadav Resident of Village-Baiju Bigha, Police Station-Bodhgaya, District-Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Higher Education Department, Government of Bihar, Patna.
2. The Vice Chancellor, Magadh University at Bodh gaya, District-Gaya.
3. The Registrar, Magadh University at Bodh Gaya, District-Gaya.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Manish Kumar No.2, Advocate. Mr. Ram Kumar, Advocate.
For the State	:	Mr. Madhaw Prasad Yadaw, GP-23.
For the University	:	Mr. Faiz Ahmad, Advocate.

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 03-07-2025

Heard Mr. Manish Kumar No.2, learned counsel along with Mr. Ram Kumar, learned counsel appearing on behalf of the petitioners, Mr. Madhaw Prasad Yadaw, learned GP-23 for the State and Mr. Faiz Ahmad, learned counsel for the University.

2. The petitioners in paragraph no. 1 of the present writ petition have sought, inter alia, following relief(s), which is reproduced hereinafter:-



“That the present writ application is being filed for setting aside the office order contained in Memo No. 42 GIB/12 dated 02.02.2012 issued by the Vice Chancellor, Magadh University at Bodh Gaya, whereby and whereunder a decision has been taken on 17.01.2012 in the meeting and declared the high school situated at campus of Magadh University and Shashi Niketan as self-financing institution and further to direct the respondent authorities to pay the arrears of salary as well as current salary to the petitioner which has been stopped after issuance of order dated 02.02.2012 till today and / or for any other relief or reliefs to which the petitioner may be found entitled to in course of hearing of this writ application.”

3. Altogether four writ petitioners are aggrieved by non-payment of their requisite salary till date which was stopped after issuance of the order dated 02.02.2012 by the Registrar of the Magadh University. The petitioners have filed the present writ petition for payment of the current salary and arrears of salary from the date he was not paid after issuance of order dated 02.02.2012.

4. A counter affidavit has been filed on behalf of the University stating therein that the denial of the salary to the petitioners is on the same ground and the same is mentioned in Para-6 and 7 of the counter affidavit. It has been informed in Para-8 that the school was recognized by the State Government vide Notification dated 31.08.1984 without financial liability. It has again been reiterated in Para-9 of the counter affidavit that the University became unable in making payment of salary from the internal sources which has resulted into non-payment of salary to the petitioners.

5. Earlier this Court in C.W.J.C. No. 1948 of 2001



vide order dated 26.02.2001 had observed that the Management of the University and the Government may take effective measures so that the school can be taken over by the Government and this Court in the said writ petition had also directed the Vice Chancellor of the University to see necessary fund be made available for payment of the petitioners forthwith so that their salary can be paid.

6. The Respondent University admits that after the order dated 31.01.2017 passed in M.J.C. No. 3953 of 2012, the petitioners were paid salary for the period from March 2008 to January 2012 since the liability accrued up to the said period.

7. No doubt, the school is not a government school and it is run by a Management Committee. The University has shown inability to take up the affairs of the school in any manner and as such took decision that school can run by generating internal finances from any source.

8. A counter affidavit filed on behalf of the University don't give information, as to whether, who are the members of the Managing Committee and the resolution of the Syndicate which was held on 17.01.2012 has also not been brought on record by way of counter affidavit.

9. In such circumstances, in absence of the vital information regarding Managing Committee of the School, which the University has now denied to take up its affairs by



declaring it to be as a self financed institution, whether the Vice Chancellor can be absolved from his duty in respect of the payment of teaching and non-teaching staff, who were appointed pursuant to the decision taken by the Syndicate of the University to establish a school for the benefit of the employees of the University in the University campus?

10. The matter relating to the payment of salary of the petitioner and similarly situated teaching staff came before this Court in C.W.J.C. No. 1948 of 2001. This Court has passed, inter alia, following orders:

"There is no denial that these employees were appointed in the school and paid salary up to June, 2000. Whether the school will be taken over by the Government, will depend upon different terms and conditions and that too it is between the Management of the University and the Government. But salary of the petitioners can not be withheld on this ground.

I, therefore, dispose of the writ application with a direction to the Vice Chancellor and Registrar of the Magadh University to see that necessary fund be made available for payment of the petitioners forthwith so that their salary can be paid."

11. No counter affidavit has been filed in spite of opportunity given to the State counsel that can only mean that the State will certainly honour the decision of the Senate at the time the order dated 26.02.2001 was passed in C.W.J.C. No. 1948 of 2001 when this Court gave liberty to the University and the government to proceed for taking over of the Management of the School by the Government.

12. In absence of development and inaction on the



part of the Vice Chancellor of the University and State that the private school imparts elementary education and secondary education and whether the eligibility in respect of educational qualification of the teacher is governed by the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as “RTE Act, 2009”) and NCTE Notification dated 23.08.2010 and 29.08.2011 which was subject matter before the Apex Court in case of *Society for Unaided Private Schools of Rajasthan Vs. Union of India and Another* reported in (2012) 6 SCC 102, wherein it held that Sections 12(1)(c) and Section 18(3) of the RTE Act, 2009 infringe the fundamental rights guaranteed to aided and unaided minority schools under Article 30(1) of the Constitution and therefore Sections 12(1)(c) and Section 18(3) of RTE Act, 2009 alone shall not apply to such aided and unaided minority schools and as far as other provisions of RTE Act, 2009 is concerned the same is upheld even for aided/ and minority schools.

13. In the present case, the petitioner is aggrieved by the non payment of salary, in so far as the action of the Managing Committee is concerned and against such action, whether this Court can exercise power under Article 226 of the Constitution of India?

14. It is well settled that the power of judicial



review can be exercised against arbitrary action which was considered by the Apex Court in the case of ***St. Mary's Education Society (Supra)***, dealing with the said question relying on its earlier judgments, the Apex Court, in paragraph nos. 66, 67, 68, 69, 70 and 75 has held as follows:

"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.

67. Our present judgment would remain incomplete if we fail to refer to the decision of this Court in Ramakrishna Mission v. Kago Kunya [Ramakrishna Mission v. Kago Kunya, (2019) 16 SCC 303] . In the said case this Court considered all its earlier judgments on the issue. The writ petition was not found maintainable against the Mission merely for the reason that it was found running a hospital, thus discharging public functions/public duty. This Court considered the issue in reference to the element of public function which should be akin to the work performed by the State in its sovereign capacity. This Court took the view 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.

68. Few relevant paragraphs of the said judgment are quoted as under for ready reference :



(Ramakrishna Mission case [Ramakrishna Mission v. Kago Kunya, (2019) 16 SCC 303] , SCC pp. 309-11 & 313, paras 17-22 & 25-26)

“17. The basic issue before this Court is whether the functions performed by the hospital are public functions, on the basis of which a writ of mandamus can lie under Article 226 of the Constitution.

18. The hospital is a branch of the Ramakrishna Mission and is subject to its control. The Mission was established by Swami Vivekanand, the foremost disciple of Shri Ramakrishna Paramhansa. Service to humanity is for the organisation co-equal with service to God as is reflected in the motto “Atmano Mokshartham Jagad Hitaya Cha”. The main object of the Ramakrishna Mission is to impart knowledge in and promote the study of Vedanta and its principles propounded by Shri Ramakrishna Paramahansa and practically illustrated by his own life and of comparative theology in its widest form. Its objects include, inter alia to establish, maintain, carry on and assist schools, colleges, universities, research institutions, libraries, hospitals and take up development and general welfare activities for the benefit of the underprivileged/backward/tribal people of society without any discrimination. These activities are voluntary, charitable and non-profit making in nature. The activities undertaken by the Mission, a non-profit entity are not closely related to those performed by the State in its sovereign capacity nor do they partake of the nature of a public duty.

19. The Governing Body of the Mission is constituted by members of the Board of Trustees of Ramakrishna Math and is vested with the power and authority to manage the organisation. The properties and funds of the Mission and its management vest in the Governing Body. Any person can become a member of the Mission if elected by the Governing Body. Members on roll form the quorum of the annual general meetings. The Managing Committee comprises of members appointed by the Governing Body for managing the affairs of the Mission. Under the Memorandum of Association and Rules and Regulations of the Mission, there is no governmental control in the functioning, administration and day-to-day management of the Mission. The conditions of service of the employees of the hospital are governed by service rules which are framed by the Mission without the intervention of any governmental body. (emphasis supplied)

20. In coming to the conclusion that the



appellants fell within the description of an authority under Article 226, the High Court placed a considerable degree of reliance on the judgment of a two-Judge Bench of this Court in Andi Mukta [Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani, (1989) 2 SCC 691 : AIR 1989 SC 1607] . Andi Mukta [Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani, (1989) 2 SCC 691 : AIR 1989 SC 1607] was a case where a public trust was running a college which was affiliated to Gujarat University, a body governed by the State legislation. The teachers of the University and all its affiliated colleges were governed, insofar as their pay scales were concerned, by the recommendations of the University Grants Commission. A dispute over pay scales raised by the association representing the teachers of the University had been the subject-matter of an award of the Chancellor, which was accepted by the Government as well as by the University. The management of the college, in question, decided to close it down without prior approval. 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.



21. 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. While the Court recognised that “the fast expanding maze of bodies affecting rights of people cannot be put into watertight compartments”, it laid down two exceptions where the remedy of mandamus would not be available : (SCC p. 698, para 15)

‘15. If the rights are purely of a private character no mandamus can issue. 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.’

22. Following the decision in *Andi Mukta* [*Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani*, (1989) 2 SCC 691 : AIR 1989 SC 1607] , this Court has had the occasion to re-visit the underlying principles in successive decisions. This has led to the evolution of principles to determine what constitutes a “public duty” and “public function” and whether the writ of mandamus would be available to an individual who seeks to enforce her right.

25. A similar view was taken in *Ramesh Ahluwalia v. State of Punjab* [*Ramesh Ahluwalia v. State of Punjab*, (2012) 12 SCC 331 : (2013) 3 SCC (L&S) 456 : 4 SCEC 715] , where a two-Judge Bench of this Court held that a private body can be held to be amenable to the jurisdiction of the High Court under Article 226 when it performs public functions which are normally expected to be performed by the State or its authorities.

26. In *Federal Bank Ltd. v. Sagar Thomas* [*Federal Bank Ltd. v. Sagar Thomas*, (2003) 10 SCC 733] , this Court analysed the earlier judgments of this Court and provided a classification of entities against whom a writ petition may be maintainable : (SCC p. 748, para 18)

‘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.’ ” (emphasis in original)

69. *The aforesaid decision of this Court in Ramakrishna Mission [Ramakrishna Mission v. Kago Kunya, (2019) 16 SCC 303] came to be considered exhaustively by a Full Bench of the High Court of Allahabad in Uttam Chand Rawat v. State of U.P. [Uttam Chand Rawat v. State of U.P., 2021 SCC OnLine All 724 : (2021) 6 All LJ 393] , wherein the Full Bench was called upon to answer the following question : (Uttam Chand Rawat case [Uttam Chand Rawat v. State of U.P., 2021 SCC OnLine All 724 : (2021) 6 All LJ 393] , SCC OnLine All para 1)*

“1. ... ‘(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?”

70. *The Full Bench proceeded to answer the aforesaid question as under : (Uttam Chand Rawat case [Uttam Chand Rawat v. State of U.P., 2021 SCC OnLine All 724 : (2021) 6 All LJ 393] , SCC OnLine All paras 16-20)*

“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 Supreme Court in Ramakrishna Mission [Ramakrishna Mission v. Kago Kunya, (2019) 16 SCC 303] 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.

17. From the discussion aforesaid and in the light of the judgments referred above, a writ petition under Article 226 of the Constitution would be maintainable against (i) the 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. (emphasis supplied)

18. There is thin line between “public functions” and “private functions” discharged by a person or a private body/authority. The writ petition would be maintainable only after determining the nature of the duty to be enforced by the body or authority rather than identifying the authority against whom it is sought.

19. It is also that even if a person or authority is discharging public function or public duty, the writ petition would be maintainable under Article 226 of the Constitution, if Court is satisfied that action under challenge falls in the domain of public law, as distinguished from private law. The twin tests for maintainability of writ are as follows:

1. The person or authority is discharging public duty/public functions.

2. Their action under challenge falls in domain of public law and not under common law.

20. The writ petition would not be maintainable against an authority or a person merely for the reason that it has been created under the statute or is to be governed by regulatory provisions. It would not even in a case where aid is received unless it is substantial in nature. The control of the State is another issue to hold a writ petition to be maintainable against an authority or a person.” (emphasis supplied)

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. (emphasis supplied)

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."

15. The Officers of the University still hold the liability to make payment of the salary to the teaching and non-teaching staff in general, particularly, the petitioners, who are before this Court, in light of the order passed in C.W.J.C. No. 1948 of 2001.

16. At this stage, learned counsel for the University informs that the order of this Court dated 26.02.2001 has been modified in MJC No. 503 of 2011. I am surprised by the statement which has been made before the Court. The mandate of Article 215 and the Contempt of Courts Act, 1971 are self contained. The order cannot be modified in contempt jurisdiction, in any manner, rather it is required to be executed in the manner the directions have been issued.

17. This Court can only observe that in view of the changed circumstance after the order passed in MJC No. 503 of 2011 and the order passed in CWJC No. 1948 of 2001, the petitioner has made out a case for interference.

18. Be that as it may be, the direction has to be complied with by the University. In case there is no Managing Committee of the School, the University owes the responsibility



to proceed to act in accordance with the direction issued by this Court vide order dated 26.02.2001.

19. The State must also see that, as to whether, the School which was established in the year 1981 and running since then has all the infrastructure and trained and qualified teachers as per the requirement of RTE Act, 2009 and NCTE Notifications dated 23.08.2010 and 29.08.2011 and governing Rules relating to the appointment of teachers and may proceed to take it over in accordance with law to protect the right of the children / students as per the mandate of Article 21A of the Constitution of India.

20. It is expected from the State Government and the Vice Chancellor of the University that they will do the needful well within a period of three months in respect of payment of due salary to the petitioners.

21. The writ petition stands disposed of.

(Purnendu Singh, J)

mantreshwar/-

AFR/NAFR	N.A.
CAV DATE	N.A.
Uploading Date	08.07.2025
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