

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4161 of 2021

Sumit Kaur Hura Wife of Tajendra Singh Hura, 2C, Janki Mangal Enclave,
Shri Krishna Nagar, East Boring Canal Road, Police Station- Budha Colony,
Patna - 800001.

... .. Petitioner/s

Versus

1. Central Board of Secondary Examination Through its Secretary, Shiksha Kendra, 2 Community Centre, Police Station- Preet Vihar, New Delhi- 110092. Email - info.cbse@gov.in
2. The Chairman, Central Board of Secondary Examination, Shiksha Kendra, 2 Community Centre, Police Station- Preet Vihar, New Delhi- 110092. Email - chpn-cbse@nic.in
3. The Secretary, Central Board of Secondary Examination, Shiksha Kendra, 2 Community Centre, Police Station- Preet Vihar, New Delhi- 110092. Email - secy-cbse@nic.in
4. The Deputy Secretary, Central Board of Secondary Examination, Shiksha Kendra, 2 Community Centre, Police Station- Preet Vihar, New Delhi- 110092. Email - sdatta.cbse@nic.in
5. The Regional Officer, Central Board of Secondary Examination, Ambika Complex, Shekhpura, Raza Bazar, Bailey Road, Police Station- Shastrinagar, Patna - 800014. Email - ropatna.cbse@nic.in
6. The Assistant Secretary (Grievance), Central Board of Secondary Examination, Ambika Complex, Shekhpura, Raza Bazar, Bailey Road, Police Station- Shastrinagar, Patna - 800014. Email - ropatna.cbse@nic.in
7. St. Michaels High School, through its Principal, Digha Ghat P.O., Police Station - Digha, Patna, Bihar - 800011. Email - michaels1858@yahoo.com
8. The Principal, St. Michaels High School (Primary Section), Digha Ghat P.O., Police Station - Digha, Patna, Bihar - 800011. Email - michaels1858@yahoo.com
9. St Michales High School (Primary Section), through its Headmistress, Digha Ghat P.O., Police Station - Digha, Patna, Bihar - 800011. Email - michaels1858@yahoo.com
10. The Headmsitress, St. Michaels High School (Primary Section), Digha Ghat P.O., Patna, Police Station - Digha, Bihar - 800011. Email - michaels1858@yahoo.com
11. St Michaels Education Association, through its President, St. Michaels High School, Digha Ghat P.O., Police Station - Digha, Patna, Bihar - 800011. Email - michaels1858@yahoo.com
12. The President, St. Michaels Education Association, St.Michaels High School, Digha Ghat P.O., Police Station - Digha, Patna, Bihar - 800011. Email - michaels1858@yahoo.com
13. The Vice President, St. Michaels Education Association, Digha Ghat P.O., Police Station - Digha, Patna, Bihar - 800011. Email - michaels1858@yahoo.com



... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ratnesh Kumar Singh, Advocate
For the CBSE	:	Mr. Vinay Krishna Tripathy, Advocate
For R.No.7 to 8	:	Mr. Manish Kumar, Advocate
		Mr. Manoj Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE AJIT KUMAR**ORAL JUDGMENT****Date : 02-09-2025**

Heard learned counsel for the petitioner, learned counsel for the Central Board of Secondary Examination (hereinafter referred as 'CBSE') and learned counsel for the St. Michaels High School (Respondent nos.7 & 8).

2. The petitioner has moved before this Court for the following reliefs:-

(i) For quashing of the order dated 05/06.11.2020 issued under the seal and signature by the Assistant Secretary (Grievance), Central Board of Secondary Examination, Patna vide its Letter No.CBSE /RO/PTN/707/2020/50747 dated 05/06.11.2020 (Annexure-48), wherein the Assistant Secretary (Grievance) upheld the exparte dismissal order dated 17.10.2020 (Annexure-46) issued under the seal and signature of Fr. Seraphim John SJ, Vice President, Saint Michele's Education Association, Patna pursuant to the Governing Body resolution dated 16.10.2020 in third domestic enquiry during her illness or in alternatively for quashing the appellate order dated 03.12.2020 (Annexure-55)



issued under the seal and signature of Fr. Donald Miranda S.J., President, Saint Michele's Education Association, Patna, wherein the President, Saint Michele's Education Association, Digha Ghat P.O., Patna-800011 upheld the dismissal order dated 17.10.2020 (Annexure-46) issued under the seal and signature of Fr. Seraphim John SJ, Vice President, Saint Michele's Education Association, Digha Ghat P.O., Patna-800011 pursuant to the Governing Body resolution dated 16.10.2020 in violation of her fundamental & legal rights under Article-14, 19, 21 & 21A the Constitution of India, under section-21, 23, 24 & 32 the Right to Children to Free and Compulsory Education Act, 2009, Rule -6, 45, 47 & 49 Central Board of Secondary Education Affiliation Bye-Law and Rule-13 of the St. Michael's School Staff and Employees Service Conditions in violation of principle of natural justice.

(ii) Awarding compensation for illegal dismissing the petitioner from the service in violation of her fundamental & legal rights under Article-14, 19, 21 & 21A the Constitution of India, under section-21, 23, 24 & 32 the Right to Children to Free and Compulsory Education Act, 2009, Rule -6, 45, 47 & 49 Central Board of Secondary Education Affiliation Bye-Law and Rule-13 of the St. Michael's School Staff and Employees Service Conditions in violation of principle of natural



justice.

(iii) Granting any other(s) reliefs) which the petitioner is entitled in the facts and circumstances of this case.

3. Learned counsel for the petitioner submits that the petitioner was a Permanent Assistant Teacher in Pre-Primary Section of St. Michael's High School, Patna, imparting elementary and secondary education from LKG to 12th Class and having affiliation with the CBSE. The petitioner is said to be aggrieved by the actions and omissions of the respondents, who violated fundamental and legal rights of the petitioner under the Right to Children to Free and Compulsory Education Act, 2009 and CBSE Affiliation Bye-Laws.

4. In this case, notices were issued, and the main contesting parties have appeared. The learned counsel for the CBSE has taken the stand that this writ application is not maintainable, as it is primarily a private dispute between the management and the petitioner, and as such, the Institute/School is not covered by Article 12 of the Constitution of India. Therefore, the writ application cannot be maintained against a private management body.

5. It is worth to note that a similar stand has also



been taken by the learned counsel representing the School, who, in support of his submission, relies upon the judgment rendered by the Hon'ble Apex Court reported in ***AIR Online 2022 SC 1324 (St. Mary's Education Society and Anr. v. Rajendra Prasad Bhargava and Ors.)***. He further submits that another recent judgment delivered by the Apex Court on the same issue, reported in ***AIR 2024 SC (Supp) 801 (Army Welfare Education Society New Delhi vs. Sunil Kumar Sharma and Ors.)***, which also addressed the question of maintainability of a writ application under Article 226 of the Constitution of India.

6. The Counsel for the Respondent school has drawn the attention of this Court towards the Judgment rendered in ***Army Welfare Education Society*** (supra), wherein the Apex Court has held that the petitioner before the High Court was an employee of an unaided private minority public school, and the dispute regarding service conditions arose between the parties while employment disputes remain contractual. Admittedly, the said school is run by a society imparting education to the students of the school. Though it involves a public duty having public involvement, still the relationship between the petitioner and the society was that of an employee and a private employer, arising out of a private contract. In case of any breach of a



private contract, the school cannot be said to be discharging any public duty in connection with the petitioner's employment. Accordingly, the writ application filed before the writ court was held to be non-maintainable.

ANALYSIS OF CONSTITUTIONAL SCHEME AND ITS APPLICABILITY THROUGH THE PRISM OF SETTLED PROPOSITION OF LAW:

Article 12 defines "State" to include Government, Legislatures, local authorities, and "other authorities" under Government control. Bodies financially, functionally and administratively dominated by the State qualify as "State."

Article 226 empowers High Courts to issue writs for enforcement of fundamental rights and for "any other purpose." However, writ jurisdiction is discretionary and is not generally exercised when adequate statutory remedies exist, unless one of the recognised exceptions (violation of fundamental rights, breach of natural justice, mala fides, jurisdictional error, or vires challenge) applies.

Case Law Analysis

- **Ajay Hasia v. Khalid Mujib Sehravardi, (1981) 1 SCC 722**

Regional Engineering College run by a registered society was held to be "State" as it was entirely funded and controlled by Government.

Test of *deep and pervasive control* is laid down. Ajay Hasia v. Khalid Mujib Sehravardi, (1981) 1 SCC 722, the Supreme Court held that even a society registered under the Societies Act could be treated as "State"



under Article 12 if it was wholly funded, controlled and managed by the Government, thereby laying down the test of deep and pervasive State control for determining “State” status.

● **Pradeep Kumar Biswas v. Indian Institute of Chemical Biology, (2002) 5 SCC 111**

Constitution Bench reaffirmed *Ajay Hasia*. The true test is financial, functional and administrative domination by Government.

● **Chunni Lal Sharma v. State of Rajasthan, (2008) 17 SCC 759.**

A co-operative society without pervasive Government control was held not to be “State.” Consequently, writ petitions against it were not maintainable.

● **St. Mary’s Education Society v. Rajendra Prasad Bhargava, AIR Online 2022 SC 1324**

Supreme Court held that private unaided educational institutions are not amenable to writ jurisdiction in matters of contractual service disputes, unless a public law element is established.

● **Army Welfare Education Society v. Sunil Kumar Sharma, AIR 2024 SCC (Supp) 801**

Reiterated that whether an institution is “State” is a fact-specific inquiry. Even if linked to public functions, unless pervasive State control is shown, employment disputes remain contractual and outside writ jurisdiction.

Aided vs Unaided Institutions



A crucial distinction arises between aided and unaided institutions. Even if aided, an institution does not automatically become a state authority; it remains private unless deep and pervasive governmental control over its finances, administration, and management is demonstrated. In unaided schools, service disputes are even more clearly private, and writs are ordinarily not maintainable. The key lies in the extent of governmental domination, as laid down in Article 12 jurisprudence by inferring to the principle enumerated in the case of *Ajay Hasia* (supra) by the Hon'ble Apex Court.

7. It is worth to note that the counsels representing CBSE and St. Michael's School, Patna, both have aligned together in submitting that the writ petition is not maintainable, as according, to them, there is already a dedicated forum established by the State Government for the redressal of grievances, supported by the formulation of specific rules known as the **Bihar State School Teachers and Employees Dispute Redressal Rules, 2015**, and further, with the repeal of Rule 2015, the Sstate Government has come out with subsequent Legislation vide Notification, Memo No.07/Pradhi-4/2016-715 dated 25.08.2020, issued by the Education Department, Government of Bihar, titled the **Bihar State Teaching Institutions Teachers and Employees (Disputes Redressal and Appeal) Rules, 2020**.

8. From perusal of the Rule 2015, it is very much



clear that Non-aided schools are covered by the said Legislation as Rule 2(vii) specifically defines non-government and non-aided schools as elementary, secondary, and higher secondary institutions constituted and managed by the management committee of a society or trust within the State and upon conjoint reading with the Rule 13 of the Chapter-3, which deals with the Powers and Functions of the District Appellate Authority, which provides that the District Appellate Authority shall hear and dispose of the complaints / appeal related to employment of Niyojit teachers, librarians and other Niyojit functionaries of Government / Nationalised elementary, secondary and higher secondary schools (including government aided/minority schools). It shall also hear and dispose of the disputes/appeals related to their service conditions. Besides, it shall also hear and dispose off the disputes related to service matter between management and teaching/non-teaching functionaries of non-government and non-aided schools functioning in the State.

9. The District Appellate Authority shall maintain properly all types of documents related to complaint / appeal. All types of complaints / appeals shall be filed before the Appellate Authority within 30 days from the date of its



occurrence. The Authority may condone the delay in filing the complaint / appeal which is received after 30 days on reasonable grounds.

10. The District Appellate Authority, while enquiring and hearing into any matter, shall have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure 1908, in respect of all the matters, where the authority shall have the power to issue summons and enforce the attendance of persons, and compel them to give oral or written evidence on oath, and to produce documents and things; Requiring the discovery and inspection of documents; Receiving evidence on affidavit; Issuing summons for examination of witnesses or documents.

11. Further, from perusal of Bihar State Teaching Institutions Teachers and Employees (Disputes Redressal and Appeal) Rules, 2020, which is framed under the powers conferred by Articles 162 and 243 of the Constitution, Sections 47 and 146 of the Bihar Panchayati Raj Act, 2006, Sections 46, 47, and 419 of the Bihar Municipal Act, 2007, Section 38 of the Right of Children to Free and Compulsory Education Act, 2009, and Section 14 of the Bihar Private Schools (Free Regulation) Act, 2019. Part 3 of the 2020 Rules, specifically outlines the



powers and functions of the District Appellate Authority. The legislation specifically intends to resolve the disputes and complains pertaining to the procedure of recruitment under Panchayati Raj Institutions and Urban body Institutions in Govt./ Nationalized Primary and Middle School, Secondary School, Senior Secondary Schools as per provisions/ rules notified by the Govt. of Bihar from time to time.

12. The aforesaid Rule 2020, further intends to resolve the disputes and complaints pertaining to recruitment of Headmaster/Teacher/ Non-teaching staffs and promotion to the post of Headmaster by the Managing Committee of 108 Govt. Aided Elementary Schools (Including Minority Schools) in which the education is imparted upto 5th or 8th standard. Besides resolving the disputes and complaints pertaining to the process of recruitment and distribution of Grants-in-Aid with respect to Aided Permission for Establishment/ Recognised Secondary and Senior Secondary Schools and Aided Colleges. The nature of disputes besides above, which can be ventilated by filing complaint before the forum created mainly related/connected with the dispute of different kind/natures are as under:

I. To resolve the disputes between the Headmaster/Teacher/Non-teaching staffs and the Man-



aging Committee of Private Schools.

II. To resolve such disputes pertaining to Headmasters/ Teachers/Non-teaching Staffs working under Panchayati Raj Institutions and Urban body Institutions in Govt./Nationalised Primary and Middle School, Secondary School, Senior Secondary Schools, who in case of being aggrieved by execution of the service condition, as prescribed, may prefer Appeal against the decision of the competent authority/ committee.

III. To resolve the disputes of execution of service condition of Headmasters/ Teachers/Non-teaching staffs of Govt. aided 108 Elementary Schools (Including Minority Schools) in which education is imparted upto standard 5th or 8th and in case of any appeal being preferred by the Headmaster/teachers/Non-teaching staffs being aggrieved by the decision of the concerned Managing Committee.

IV. To resolve the disputes pertaining to execution of service condition of Principal /Vice-Principal/Assistant Principal/ Headmaster/ Teachers/ Non-Teaching Staffs of Aided,



Permission for Establishment, Recognised Secondary/Senior Secondary Schools and Aided Colleges and in case of any appeal being preferred by the concerned Principal / Vice-Principal/AssistantPrincipal/Headmaster/Teacher/ Non-Teaching staffs being aggrieved by the decision of the concerned Managing Committee.

13. From the reading of Rule 2020 and its definition clause defining “Private school” and “Managing Committee” read with powers and function of the District Appellate Authority as provided under the Legislation brought into being after the repeal of earlier legislation being Rule 2015, it is unambiguously clear that the *fora* created by the State is capable to address the grievances raised in this writ petition and therefore, the dispute of kind emanating from the private contract or from a breach of contract which can well be ventilated before the duly constituted body having statutory force in law in exercise of the powers conferred by Articles 162 and 243 of the Constitution. Admittedly, the petitioner is an employee of a private unaided school, which school was also covered under the Bihar State School Teachers and Employees Dispute Redressal Rules, 2015, at the time when this writ petition was preferred, and further upon new enactment with the



repeal of Rule 2015, by putting in place, new legislation being known as Bihar State Teaching Institutions Teachers and Employees (Disputes Redressal and Appeal) Rules, 2020, is undoubtedly efficiently capable to take care of the disputes of present kind.

14. By referring to the preamble and its objective deduced from the provision, it leaves no doubt that in case of any violation of the rights of teaching and non-teaching staff of any private unaided management body, a forum which has been created under these rules, the employees of such schools, whether teaching or non-teaching, have the right to ventilate their grievances by filing proper applications before the designated authority, within the stipulated time as provided in the said legislation.

15. Learned Counsel for the petitioner in response to such stand of the Respondents has relied upon a judgment rendered by the Hon'ble Apex Court in the case of *Zee Telefilms Ltd. & Anr. vs. Union of India & Ors.*, reported in *(2005) 4 SCC 649*, and by referring to paragraph 70 of the said judgment submits that if a private body is allowed to discharge a public duty or a positive obligation of a public nature, and furthermore is allowed to perform regulatory and controlling



functions which are otherwise the job of the Government, a writ can be maintained.

16. In the opinion of this Court, the judgment relied upon by the learned counsel for the petitioner does not cover the case of the petitioner as the facts and the background of the said Zee Telefilms (*supra*) is different from the facts of the present case and therefore, the applicability of the ratio laid down does not support the case of the petitioner. In order to analyse, the dictum laid down by the Hon'ble Apex Court in Ajay Hasia case (*supra*) can be inferred, where it has been held that even a society registered under the Societies Act could be treated as "State" under Article 12, if it was wholly funded, controlled and managed by the Government, thereby laying down the test of deep and pervasive State control for determining "State" status. While, in the case at hand, the test which has been provided to hold the petitioner's school within the meaning of "State" to maintain writ petitioner is absent and as such is being held in Negative.

17. The judgments rendered by Hon'ble Apex Court in St. Mary's Education Society (*supra*) and Army Welfare Education Society (*supra*) essentially deals with the core issues involved in the present writ application, wherein it



has been categorically held that the nature of services rendered by the petitioner is purely contractual. Any breach thereof can only be agitated by taking recourse either through civil law or the forum created by the State Government to redress such grievances, on approaching the Tribunal constituted under the provisions of Rule 13 of the aforesaid Rules.

18. Considering the foregoing discussions, this Court is of the view that the petitioner has miserably failed to demonstrate the factors leading to maintainability of writ petition against the Respondent Nos. 7 and 8, by bringing it within the purview of Article 12 of the Constitution of India for the purpose of maintaining the writ application. No plausible answer has been provided, showing functionality being public in nature and State has pervasive control except a reliance on the paragraphs referred to hereinabove in the case of *Zee Telefilms* (supra) “which does not support the case of the petitioner for the reasons explained herein above.”

19. In the considered view of this Court, since a forum has already been created by the State, and the petitioner’s case though involves alleged violations of rights, including those under the Right to Education Act, all such grievances can be adequately addressed by the Tribunal constituted under the



Bihar State School Teachers and Employees Dispute Redressal Rules, 2020. Therefore, this Court holds that the petitioner has an effective remedy available where the grievances raised in the instant writ application can be addressed.

20. Accordingly, the petitioner is directed to seek remedy before the concerned District Appellate Authority, and in case of her grievances not being addressed by the original authority, the petitioner has further remedy to approach the State Appellate Authority. Limitation period, if any, shall not stand in the way of the aggrieved party, by invoking the powers restored to the Authority with appropriate condonation application, if the delay occasioned is sufficiently explained.

21. Since, the present petitioner had chosen to agitate the matter before the High court by filing the instant writ petition, therefore by taking into account the provisions of Limitation Act, the application for condonation of delay must be considered sympathetically and by invoking the powers as provided under the Rules.

22. The petitioner is directed to file appropriate application before the concerned District Appellate Authority, who shall take all necessary steps, including issuing notices to all stakeholders, and after completion of pleadings, the matter



shall be decided, preferably, within six months from the date of filing of such appeal.

23. It goes without saying that this Court has not rendered any opinion on the merits of the case and it is left open for the petitioner to agitate all such issues, which according to the petitioner is found fit to be addressed by the Tribunal.

24. With the following observations and directions, the instant writ application stands disposed of.

(Ajit Kumar, J)

shikha/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	10.09.2025
Transmission Date	NA

