

21.05.2025
SI No.12
Court No.8
(SKG)

FMA 1215 of 2024

With

CAN 1 of 2024

Sharmila Sen

-vs-

The State of West Bengal & Ors.

Ms. Riva Dutta,
Mr. Rhitam Chatterjee,
...for the Appellant.

Mr. Ranjan Saha,
Mr. Md. Ziaur Rahaman,
....for the State Respondents

Mr. Debdatta Sen, Sr. Avd.,
Mrs. Suchismita Ghosh Chatterjee,
Mr. Malay Kumar Seal,
... for the Respondent no. 8 and 9

1. The preliminary objection with regard to the maintainability of the writ was taken at the threshold by the learned Counsel for the private respondents.
2. The learned Counsel for the appellant submits that a sham enquiry proceeding was initiated and she was compelled to resign from the school. Intervention of the Directorate of School Education was necessitated by reason of such illegal act on the part of the G.D Birla Centre for Education in which she was working as an English Teacher.
3. It appears that the allegation against the school authority was considered by the

Deputy Director of School Education and in the communication dated 31st July, 2012 from the Deputy Director of School Education (A.I.S) W.B. the enquiry report reflects the following observations:

*“1. Miss Sharmila Sen submitted resignation letter dt.18.8.08.
2. On 18.8.2008 such resignation letter was accepted on behalf of the school.
3. On or about 26.8.08, the school management intimated Miss Sen as regards settlement of her dues amounting to Rs.65,181/-, Rs.4,01,596/- and Rs.90,681/-.
4. Miss Sharmila Sen duly acknowledged receipt of such amount and gave a declaration to the school that she has no claim whatsoever nature on any account against the school.
5. The enquiry team does not find any proof depending upon which a conclusion can be drawn that Ms. Sharmila Sen had tendered her resignation on 18.8.2008 under compulsion. Rather evidences & reasoning show contrary to that possibility wherein it may be counted as voluntary resignation.*

4. The observation of the Deputy Director of School Education was placed before the Directorate of School Education Anglo Indian Schools for consideration.
5. In view of the fact that the issue of maintainability of the writ petition is raised, it has to be considered in the light of the character of the said institution. It is not in

disputed that the G.D. Birla Centre for Education (formerly known as Ashok Hall) is a private education institution having no deep and pervasive control of the Government. The letter of appointment is neither required to be approved by the Government nor any dismissal of the writ petitioners required prior sanction of the Government. The school is also not receiving financial aid from the Government. The enforcement of the service condition of a private institution was recently considered in ***St. Mary's Education Society & Anr. V. Rajendra Prasad Bhargava & Ors. reported in 2023(4) SCC 498*** in which is was inter alia observed:

“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”.

6. Mere fact that the said private institution was imparting education does not by itself make the institution amenable to writ jurisdiction as observed in paragraph 75.3 of the said judgment which is reproduced below:

“75.3..... An education 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.”

7. This issue has also been considered by a Co-ordinate bench in ***Pinaki Dhar v. State of West Bengal & Ors (FMA 763 of 2022 dt. 27th March, 2024)*** in which it was observed as follows:

*“24. A writ against a Private Education Institution was considered in **Executive Committee of Vaish Degree College, Shamli and Ors. Vs. Lakshmi Narain and Ors.** reported in **AIR 1976 SC 888** which was followed in **Vaish Degree College v. Lakshmi Narain, AIR 1976 SC 1073** in these two decisions of the Hon’ble Supreme Court it has been held that a college, even if it is registered under the Societies Registration Act or affiliated to University would not be a statutory body.*

*25. A writ against the Private Education Institution would lie only if it can be regarded as a statutory body and as to when a body can be regarded as a statutory one has been explained in paragraph 9 of **Vaish Degree***

College (supra) according to which if an institution owes its existence to a statute it would be a statutory body but if after coming into existence it is governed in accordance with the provisions of the statute the position would be different. It is clearly stated in the said decision that there have been a number of institutions which though not created by or under any statute have adopted certain statutory provisions but that by itself is not sufficient to clothe the institution with a statutory character. The question in such cases to be asked is, if there is no statute would the institution have any legal existence. If the answer in the negative, then undoubtedly it is a statutory body, but if the institution has a separate existence of its own without any reference to the statute concerned but is merely governed by the statutory provisions it cannot be said to be a statutory body. Merely because the institution is governed by certain statutory provisions for the proper maintenance and administration of the institution it would not be considered to be a statutory body. On such reasoning, the Executive Committee of Vaish Degree College registered under the Registration of Co-operative Societies Act and

affiliated to the Agra University (and subsequent to Meerut University) was held as not a statutory body and the State or an authority within the meaning of Article 12 of the Constitution of India.

*26. However, the situation would be different where an institute is receiving government aid and the rules governing aid very often required approval of the statutory authority especially in matters relating to termination of services of the concerned employees. In such situation the challenge to the termination order of the statutory authority is amenable to writ jurisdiction as held in **Tikaram Vs. Mundikota Shikshan Prasarak Mandal and Ors.**, reported in **AIR 1984 SC 1621**.*

28. A private educational institution, even if it is recognized, by or affiliated to, a university, cannot be regarded as an instrumentality of the government for the purpose of Article 12. Recognition is only for the purpose of conforming to the standards laid down by the State. The affiliation is with regard to syllabi in the course of study (see. Unni Krishnan, J.P. & Ors. V. State of Andhra Pradesh & Ors., reported in AIR 1993 SC 2178 : (1993) 1 SCC 645)

40. It is suffice at this stage to say that function-based approach has enabled the courts to articulate more exclusively the modern constitutional role of judicial review. However the absence of a direct statutory obligation would suggest that the function is not public. The boundary between public law and private law may not be capable of precise definition, and as observed in *R. (on the application of the Liberal Democrats) v ITV Broadcasting Ltd* (2019) EWHC 3282 (admin);: 2003 EWCA CIV 57; 2003 ICR 599 (Scot LJ.) “.....whether a decision has a sufficient public law element to justify the intervention... by the judicial review is often as much a matter of feel, as deciding whether any particular criteria are met.”

41. Nonetheless, a non-statutory and purely private contract of employment is not amenable to writ jurisdiction and this principle has been recently reiterated in *Ramkrishna Mission* (supra) and followed in *St. Mary's* (supra).

43. The following general propositions can be guiding factors in deciding the issue:

- I. *The fact that a service is for the public benefit does not mean that providing the service is a public function;*
- II. *The fact that a function has a public connection with a statutory duty of a public body does not necessarily mean that the function is itself public;*
- III. *The fact that a public authority could have performed the function does not mean that the function is a public one if done by a private body;*
- IV. *The private profit-making motivation behind a private body's operations points against treating it as a person with a function of a public nature; and functions of a public character are essentially functions which are governmental in nature. [see, **De. Smith's Judicial Review** (9th Edition)]*

44. *The summary of the aforesaid principles are indicated in R. (on the application of the Liberal Democrats) v ITV Broadcasting Ltd (2019) EWHC 3282 (admin); (2020) 4 W.L.R. 4 at 72.*

45. *All the aforesaid principles have been elaborately discussed and explained in St.*

Mary's Education Society (supra) in paragraph 66 in which it is held as under:

“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.”
(emphasis supplied)

46. The law was summarised in paragraph 75 in which it has been clearly stated that the actions and decisions if are “solely within the confines of an ordinary contract of service, having no statutory basis or backing” such institutions are not amenable to writ

jurisdiction. Imparting education by a Private Unaided School even if it is perceived to be a public duty unless in respect of matters relating to services in such institution are governed or controlled by statutory provisions the actions taken within the confines of an ordinary contract of service are not amenable to writ jurisdiction. It is only where the removal of an employee or non-teaching staff is in contravention of law and in breach of statutory provision the courts may interfere. However, the reason for such interference is “on the ground of breach of law and not on the basis of interference in discharge of public duty” (see. St. Mary’s Education Society (supra) para 75.4).”

8. Recently this bench in **MAT 84 of 2025, Ratna Mitter & Anr. v. State of West Bengal & Ors.**, decided on 14th May, 2025 has also considered similar issue in respect of DA getting institution and held that merely because the school was getting DA at an earlier point of time, regard being had to the nature of the contract between the employer and employee which has no statutory force or flavor the writ petition is not maintainable.

9. On such consideration the said writ petition was not maintainable as it does not involve any public law element. However, private law remedies available to the writ petitioner is kept open and it would be open for the writ petitioner to agitate her claim in appropriate forum in accordance with law.
10. We make it clear that we have not gone into the merits of the matter. The appeal and the application are dismissed.

(Soumen Sen, J.)

(Smita Das De, J.)