

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 9161 of 2022

Abhshek Kumar Son of Subodh Kumar Choudhary resident of Bagha, Bypass Road, Ward No. 29, P.S.- Begusarai, District- Begusarai.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Education Department, Government of Bihar, Patna.
2. The Secretary Higher Education, Education Department, Government of Bihar, Patna.
3. The Director Higher Education, Education Department, Government of Bihar, Patna.
4. Lalit Narayan Mithila University, Darbhanga through the Vice Chancellor.
5. The Vice Chancellor, Lalit Narayan Mithila University.
6. The Patliputra University, Patna through the Vice Chancellor.
7. M.M. Rahmani, B.Ed College, Begusarai through the Managing Committee.
8. The Principal, M.M. Rahmani, B.Ed College, Begusarai
9. Sukhdeo Narayan, Lalbahadur Sitaram Memorial B.Ed. College, Nalanda.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Krishna Kant Singh, Advocate
For the State	:	Mr. Shankar Kumar Thakur, AC to GP-27
For the Respondent		
No. 7 & 8	:	Mr. Ravi Bhardwaj, Advocate
For Respondent Univ.	:	Mr. Iqbal Asif Niazi, Advocate
For Respondent No. 9	:	Mr. Suresh Mishra, Advocate

CORAM: HONOURABLE MR. JUSTICE RITESH KUMAR
ORAL JUDGMENT

Date : 09-07-2026

Heard the parties.

2. The present writ petition has been filed for the following reliefs:-

“(i) For issuance of the writ in the nature of certiorari for quashing the letter dated 07.05.2022 issued under the signature of the Principal M.M.



College, Rahmani B.Ed. Damodarpur, Begusarai whereby service the of the petitioner who working was as Assistant Professor in the college in question was terminated illegally contrary to law and based on wrong facts and without any proper inquiry.

(ii) For further that after setting aside the termination letter dated 07.05.2022 the petitioner directed service to be reinstated in forthwith with all consequential benefits as if he has never been terminated from service and has remained all along in service and further to restrain the concerned authorities from filling up the post of English Subject and if in between any selection is made the same be declared illegal.

(iii) For further restraining the respondent authorities from taking any steps with respect to recovery of the salary drawn by the petitioner and further to hold that the legal notice dated 16.05.2022 issued by Dr. Nand Kishore Singh, Advocate for recovery of the salary paid has no legal sanctity in the eye of law muchless the same is beyond the



purview of service jurisprudence.

(iv) For further directing the concerned respondent authorities to look into the grievance of the petitioner and take appropriate action against the persons responsible for illegal action and also who have misappropriated the government money by manipulating the records as also by impersonating.”

3. The matter has been heard on different dates by learned Co-ordinate Benches of this Court and even by this Court. Affidavits have been filed on behalf of the different contesting respondents, wherein a preliminary objection with regard to maintainability of the writ petition has been raised. When the matter was taken up on 18.06.2026, the learned counsels appearing on behalf of the contesting respondents i.e. Respondent Nos. 7 to 9 raised objection with regard to maintainability of the writ petition, on the ground that the reliefs prayed for in the present writ petition have been sought for against a college, which is an affiliated unit of the Patliputra University, Patna and the dispute is related to the termination of services of the petitioner, which is entirely a service dispute and since the relief has been prayed for against an affiliated college, which is not a State within the meaning of Article 12 of the



Constitution of India, therefore, the writ petition is not maintainable.

4. The learned counsel for the petitioner submits that the writ petition filed by the petitioner is maintainable before this Hon'ble Court in view of the settled law in this regard by the Hon'ble Supreme Court of India.

5. In support of his contention, the learned counsel for the petitioner refers to and relies upon a judgment of the Hon'ble Supreme Court of India reported in **(1989) 2 SCC 691 (Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust & Ors. versus V. R. Rudani and Ors.)**, wherein in paragraph no. 17, the Hon'ble Supreme Court of India has held as follows:-

“17. There, however, the prerogative writ of mandamus is confined only to public authorities to compel performance of public duty. The “public authority” for them means everybody which is created by statute — and whose powers and duties are defined by statute. So government departments, local authorities, police authorities, and statutory undertakings and corporations, are all “public authorities”. But there is no such limitation for our High Courts to issue the writ “in the nature of mandamus”. Article 226 confers wide



powers on the High Courts to issue writs in the nature of prerogative writs. This is a striking departure from the English law. Under Article 226, writs can be issued to “any person or authority”. It can be issued “for the enforcement of any of the fundamental rights and for any other purpose”.”

6. The learned counsel for the petitioner further refers to and relies upon a judgment of the of the Hon’ble Supreme Court of India reported in **(2012) 12 SCC 331 (Ramesh Ahluwalia v. State of Punjab & Ors.)**, wherein in paragraph nos. 11 to 14, the Hon’ble Supreme Court of India has held as follows:-

11. On the other hand, Mr S.S. Ray, learned counsel appearing on behalf of Respondents 2 to 4 submitted that no writ petition would be maintainable against the respondent institution. In support of his submission, the learned counsel has placed reliance on Pradeep Kumar Biswas v. Indian Institute of Chemical Biology [(2002) 5 SCC 111 : 2002 SCC (L&S) 633] particularly making reference to para 40 of the aforesaid judgment. Para 40 of the aforesaid judgment is extracted hereunder: (SCC p. 134)

“40. The picture that ultimately emerges is that the tests formulated in Ajay Hasia [Ajay Hasia v. Khalid Mujib Sehravardi, (1981) 1



SCC 722 : 1981 SCC (L&S) 258] are not a rigid set of principles so that if a body falls within any one of them it must, ex hypothesi, be considered to be a State within the meaning of Article 12. The question in each case would be—whether in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under the control of the Government. Such control must be particular to the body in question and must be pervasive. If this is found then the body is a State within Article 12. On the other hand, when the control is merely regulatory whether under statute or otherwise, it would not serve to make the body a State.”

12. *We have considered the submissions made by the learned counsel for the parties. In our opinion, in view of the judgment rendered by this Court in Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust [(1989) 2 SCC 691] there can be no doubt that even a purely private body, where the State has no control over its internal affairs, would be amenable to the jurisdiction of the High Court under Article 226 of the Constitution, for issuance of a writ of mandamus. Provided, of course, the private body is performing public functions which are normally expected to be performed by the State authorities.*



13. *In the aforesaid case, this Court was also considering a situation where the services of a Lecturer had been terminated who was working in the college run by the Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust. In those circumstances, this Court has clearly observed as under: (V.R. Rudani case [(1989) 2 SCC 691] , SCC pp. 700-701, paras 20 & 22)*

“20. *The term ‘authority’ used in Article 226, in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words ‘any person or authority’ used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed, if a positive obligation exists mandamus cannot be denied.*



22. *Here again we may point out that mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute. Commenting on the development of this law, Professor de Smith states: 'To be enforceable by mandamus a public duty does not necessarily have to be one imposed by statute. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract.'* [S.A. de Smith, *Judicial Review of Administrative Action* (4th Edn., Stevens & Sons Ltd., London 1980) at p. 540] We share this view. The judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into watertight compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available 'to reach injustice wherever it is found'. Technicalities should not come in the way of granting that relief under Article 226. We, therefore, reject the contention urged for the appellants on the maintainability of the writ petition."

The aforesaid observations have been repeated and reiterated in numerous judgments of this Court including the judgments in Unni Krishnan [(1993) 1 SCC 645] and Zee Telefilms Ltd. [(2005) 4 SCC 649] brought to our notice by the learned



counsel for the appellant, Mr Parikh.

14. *In view of the law laid down in the aforementioned judgments of this Court, the judgment of the learned Single Judge [Ramesh Ahluwalia v. State of Punjab, WP (C) No. 11691 of 2009, decided on 5-8-2009 (P&H)] as also the Division Bench [Ramesh Ahluwalia v. State of Punjab, LPA No. 368 of 2010, order dated 25-10-2010 (P&H)] of the High Court cannot be sustained on the proposition that the writ petition would not be maintainable merely because the respondent institution is a purely unaided private educational institutio*
14. *In view of the law laid down in the aforementioned judgments of this Court, the judgment of the learned Single Judge [Ramesh Ahluwalia v. State of Punjab, WP (C) No. 11691 of 2009, decided on 5-8-2009 (P&H)] as also the Division Bench [Ramesh Ahluwalia v. State of Punjab, LPA No. 368 of 2010, order dated 25-10-2010 (P&H)] of the High Court cannot be sustained on the proposition that the writ petition would not be maintainable merely because the respondent institution is a purely unaided private educational institution. The appellant had specifically taken the plea that the respondents perform public functions i.e. providing education to children in their institutions throughout India.n. The appellant had specifically*



taken the plea that the respondents perform public functions i.e. providing education to children in their institutions throughout India.

7. The learned counsel for the petitioner further refers to and relies upon a judgment of the of the Hon'ble Supreme Court of India reported in **(2020) 14 SCC 449 (Marwari Balika Vidyalaya versus Asha Srivastava & Ors.)**, wherein in paragraph no. 16, the Hon'ble Supreme Court of India has held as follows:-

“16. It is apparent from the aforesaid decisions that the writ application is maintainable in such a matter even as against the private unaided educational institutions.”

8. Per Contra, the learned counsel appearing on behalf of the respondent nos. 7 and 8 submits that in view of the judgment of the Hon'ble Supreme Court of India reported in **(2024) 16 SCC 598 (Army Welfare Education Society, New Delhi versus Sunil Kumar Sharma & Ors.)**, the writ petition is not maintainable since, the Hon'ble Supreme Court of India in paragraph no. 6, 41 and 42 has held as follows:-

“6. The following two questions of law fall for our consideration:

6.1. (a) Whether the appellant Army Welfare Education Society is “State” within Article 12 of the Constitution of India so



as to make a writ petition under Article 226 of the Constitution maintainable against it? In other words, whether a service dispute in the private realm involving a private educational institution and its employees can be adjudicated upon in a writ petition filed under Article 226 of the Constitution?

6.2. *(b) Even if it is assumed that the appellant Army Welfare Education Society is a body performing public duty amenable to writ jurisdiction, whether all its decisions are subject to judicial review or only those decisions which have public law element therein can be judicially reviewed under the writ jurisdiction?*

41. *If the authority/body can be treated as “State” within the meaning of Article 12 of the Constitution of India, then in such circumstances, it goes without saying that a writ petition under Article 226 would be maintainable against such an authority/body for the purpose of enforcement of fundamental and other legal rights. Therefore, the definition contained in Article 12 is for the purpose of application of the provisions contained in Part III. Article 226 of the Constitution, which deals with powers of the High Courts to issue certain writs, inter alia, stipulates that every High Court has the power to issue directions,*



orders or writs to any person or authority, including, in appropriate cases, any Government, for the enforcement of any of the rights conferred by Part III and for any other purpose.

42. *So far as Article 12 of the Constitution is concerned, the “State” includes “all local and other authorities within the territory of India or under the control of the Government of India”. The debate on the question as to which body would qualify as “other authority” and the test/principles applicable for ascertaining as to whether a particular body can be treated as “other authority” has been never ending. If such an authority violates the fundamental right or other legal rights of any person or citizen (as the case may be), a writ petition can be filed under Article 226 of the Constitution invoking the extraordinary jurisdiction of the High Court and seeking appropriate direction, order or writ. However, under Article 226 of the Constitution, the power of the High Court is not limited to the Government or authority which qualifies to be “State” under Article 12. Power is extended to issue directions, orders or writs “to any person or authority”. Again, this power of issuing directions, orders or writs is not limited to*



enforcement of fundamental rights conferred by Part III, but also “for any other purpose”. Thus, power of the High Court takes within its sweep more “authorities” than stipulated in Article 12 and the subject-matter which can be dealt with under this Article is also wider in scope.”

9. The learned counsel for the respondent nos. 7 & 8 submits that in view of the recent judicial pronouncement of the Hon’ble Supreme Court of India, wherein the judgments referred to by the learned counsel for the petitioner have been taken note of, the writ petition is not maintainable and is liable to be dismissed by this Hon’ble Court at the stage of admission itself.

10. Similarly, the learned counsel appearing on behalf of the respondent no. 9 refers to and relies upon a judgment of the Hon’ble Full Bench of this Court reported in **1987 BLJ 823 (Manju Devi versus District Superintendent of Education, Bhagalpur & Ors.)**, wherein the Hon’ble Full Bench, after considering the maintainability of the matter related to a teacher in the privately managed school, even though financially aided by the State, whose services was terminated, after considering the entire aspect, in paragraph no. 14 has held as follows:-



“14. To sum up, the answer to the question put at the outset is rendered in the negative and it is held that a teacher in a privately managed school even though financially aided by the State, cannot maintain a writ petition against the termination of his services by such a school. Consequently the present writ petition is dismissed, but there will be no order as to costs.”

11. The learned counsel appearing on behalf of the respondent no. 9 further refers to and relies upon a judgment of the Hon'ble Supreme Court of India reported in **(2002) 8 SSC 481 (T.M.A. Pai Foundation & Ors. versus State of Karnataka & Ors.)**, wherein in paragraph no. 231, it has been held as follows:-

“231. Before concluding the matter, it is necessary to deal with a few more aspects which relate to the regulatory measures taken by the Government with regard to government-aided minority institutions. In that connection, the State must see that the regulatory measures of control of such institutions should be minimum and there should not be interference in the internal or day-to-day working of the management. However, the State would be justified in enforcing the standard of education in such institutions. In case of minority



professional institutions, it can also be stipulated that passing of common entrance test held by the State agency is necessary to seek admission. It is for the reason that the products of such professional institutions are not only going to serve the minorities but also the majority community. So far as the redressal of grievances of staff and teachers of minority institutions is concerned, a mechanism has to be evolved. Past experience shows that setting up a tribunal for a particular class of employees is neither expedient nor conducive to the interest of such employees. In that view of the matter, each District Judge which includes the Additional District Judge of the respective district be designated as Tribunal for redressal of the grievances of the employee and staff of such institutions.”

12. The learned counsel for the respondent no. 9 further refers to and relies upon a judgment of the Hon’ble Supreme Court of India reported in **(2012) 12 SCC 331, (Ramesh Ahluwalia versus State of Punjab & Ors.)**, wherein in paragraph nos. 15 to 17, it has been held as follows:-

“15. We must, however, notice that the learned Single Judge has dismissed the writ petition also on the ground that it involves disputed questions of fact. Mr



Ray, learned counsel appearing on behalf of the respondents has submitted that the appellant actually has not been able to contradict any of the proven facts. According to the learned counsel, the remedy of the appellant is to file a civil suit, if so advised. Therefore, the writ petition has been rightly dismissed by the High Court. Mr Parikh, learned counsel for the appellant, however, submits that the civil suit would not be an alternative efficacious remedy in the facts of this case. In support of this submission, he brought to our notice certain observations made by a Constitution Bench of this Court in T.M.A. Pai Foundation v. State of Karnataka [(2002) 8 SCC 481] . The learned counsel pointed out that, in the aforesaid case, this Court had directed that the Appellate Tribunal should be set up in each district of each State to hear appeals over the decisions taken by the disciplinary bodies of even purely private educational institutions. It was emphasised that speedy resolution of the disputes between the teachers and the management is in the interest of all i.e. students, management as well as the teachers concerned. It appears that at the time when the appeal of the appellant was heard, such a tribunal had not been set up in the State of Punjab.



The appeal filed before the Disciplinary Committee was also not referred to the District Judge by the Disciplinary Committee.

16. We are of the considered opinion that since the writ petition clearly involves disputed questions of fact, it is appropriate that the matter should be decided by an appropriate tribunal/court.

17. At this stage, we are informed that the State of Punjab has set up a tribunal, namely, Punjab School Education Tribunal, Mohali, which is empowered to entertain appeals even where orders have been passed by the unaided private educational institutions. In that view of the matter, the remedy of appeal is clearly available to the appellant. It would, therefore, be appropriate for the appellant to avail the remedy of appeal before the aforementioned Education Tribunal.”

13. The learned counsel for the respondent no. 9 further refers to and relies upon a judgment of the Hon’ble Supreme Court of India reported in **(2015) 17 SCC 353 (Committee of Management, Delhi Public School and Anr. Versus M.K. Gandhi & Ors.)** wherein in paragraph no. 4, it has been held as follows:-

“4. With great respect to the Full Bench of the



High Court, we fail to understand the direction given by the Allahabad High Court. In our opinion, the direction given by the Allahabad High Court to CBSE is totally misconceived and uncalled for. When the Allahabad High Court has already held that DPS School is not a “State” within the meaning of Article 12 of the Constitution of India and the writ petition is not maintainable, there was no necessity for giving a direction to CBSE which virtually amounts to granting a declaration in favour of those teachers whose services have been terminated. We fail to appreciate the view taken by the Allahabad High Court by unnecessarily complicating the issue by involving CBSE in a private dispute between the teachers and DPS. The Allahabad High Court should have stopped short of holding that the said DPS is a private body and the writ is not maintainable.”

14. Similarly, the learned counsel for the respondent no. 9 refers to and relies upon a judgment of the Hon’ble Supreme Court of India reported in **(2023) 4 SCC 498 (St. Mary’s Education Society & Another Vs. Rajendra Prasad Bhargava & Ors.)**, wherein in paragraph nos. 29 to 36, it has been held as follows:-

“29. Respondent 1 herein has laid much



emphasis on the fact that at the time of his appointment in the school, the same was affiliated to the Madhya Pradesh State Board. It is his case that at the relevant point of time the school used to receive the grant-in-aid from the State Government of Madhya Pradesh. Later in point of time, the school came to be affiliated to CBSE. The argument of Respondent 1 seems to be that as the school is affiliated to the Central Board i.e. CBSE, it falls within the ambit of “State” under Article 12 of the Constitution. The school is affiliated to CBSE for the purpose of imparting elementary education under the Right of Children to Free and Compulsory Education Act, 2009 (for short “the 2009 Act”). As Appellant 1 is engaged in imparting of education, it could be said to be performing public functions. To put it in other words, Appellant 1 could be said to be performing public duty. Even if a body performing public duty is amenable to the writ jurisdiction, all its decisions are not subject to judicial review. Only those decisions which have public element therein can be judicially reviewed under the writ jurisdiction. If the action challenged does not have the public element, a writ of mandamus cannot be issued as the action could be said to be essentially of a private



character.

30. *We may at the outset state that CBSE is only a society registered under the Societies Registration Act, 1860 and the school affiliated to it is not a creature of the statute and hence not a statutory body. The distinction between a body created by the statute and a body governed in accordance with a statute has been explained by this Court in Executive Committee of Vaish Degree College v. Lakshmi Narain [Executive Committee of Vaish Degree College v. Lakshmi Narain, (1976) 2 SCC 58 : 1976 SCC (L&S) 176] , as follows : (SCC p. 65, para 10)*

“10. ... It is, therefore, clear that there is a well marked distinction between a body which is created by the statute and a body which after having come into existence is governed in accordance with the provisions of the statute. In other words the position seems to be that the institution concerned must owe its very existence to a statute which would be the fountainhead of its powers. The question in such cases to be asked is, if there is no statute would the institution have any legal existence. If the answer is 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.”

31. As stated above, the school is affiliated to CBSE for the sake of convenience, namely, for the purpose of recognition and syllabus or the courses of study and the provisions of the 2009 Act and the Rules framed thereunder.

32. The contention canvassed by Respondent 1 is that a writ petition is maintainable against the Committee of Management controlling the affairs of an institution (minority) run by it, if it violates any rules and Bye-laws laid down by CBSE. First, as discussed above, CBSE itself is not a statutory body nor the regulations framed by it have any statutory force. Secondly, the mere fact that the Board grants recognition to the institutions on certain terms and conditions itself does not confer any enforceable right on any person as against the Committee of Management.

33. In Regina v. St. Aloysius Higher Secondary School [Regina v. St. Aloysius Higher Secondary School, (1972) 4 SCC 188 : AIR 1971 SC 1920] , this Court held that the mere fact that an institution is recognised by an authority, does not itself create an enforceable right to an aggrieved party against the Management by a teacher on the ground



of breach or non-compliance of any of the Rules which was part of terms of the recognition. It was observed as under : (SCC p. 198, para 24)

“24. ... The Rules thus govern the terms on which the Government would grant recognition and aid and the Government can enforce these rules upon the management. But the enforcement of such rules is a matter between the Government and the management, and a third party, such as teacher aggrieved by some order of the management cannot derive from the rules any enforceable right against the management on the ground of breach or non-compliance of any of the rules.”

34. *In Anita Verma v. D.A.V. College Management Committee [Anita Verma v. D.A.V. College Management Committee, (1992) 1 UPLBEC 30] :*

“... 30. Where the services of a teacher were terminated, the Court held that the writ petition under Article 226 is not maintainable as the institution cannot be treated as the instrumentality of the State. The matter was considered in detail in Harbans Kaur v. Guru Tegh Bahadur Public School [Harbans Kaur v. Guru Tegh Bahadur Public School, 1992 SCC OnLine All 444 : 1992 Lab IC 2070] , wherein the services of the petitioner were terminated by the



Managing Committee of the institution recognised by CBSE. It was held that the Affiliation Bye-laws framed by CBSE have no statutory force. The Court under Article 226 of the Constitution of India can enforce compliance of statutory provision against a committee of management as held in a Full Bench decision of this Court in Aley Ahmad Abidi v. District Inspector of Schools [Aley Ahmad Abidi v. District Inspector of Schools, 1976 SCC OnLine All 325 : AIR 1977 All 539] . The Affiliation Bye-laws of CBSE having no statutory force, the only remedy against the aggrieved person is to approach CBSE putting his grievances in relation to the violation of the Affiliation Bye-laws by the institution.”

35. Thus, where a teacher or non-teaching staff challenges the action of Committee of Management that it has violated the terms of contract or the rules of the Affiliation Bye-laws, the appropriate remedy of such teacher or employee is to approach CBSE or to take such other legal remedy available under law. It is open to CBSE to take appropriate action against the Committee of Management of the institution for withdrawal of recognition in case it finds that the Committee of Management has not performed its duties in accordance with



the Affiliation Bye-laws.

36. *It needs no elaboration to state that a school affiliated to CBSE which is unaided is not a State within Article 12 of the Constitution of India [see Satimbla Sharma v. St Paul's Senior Secondary School [Satimbla Sharma v. St Paul's Senior Secondary School, (2011) 13 SCC 760 : (2012) 2 SCC (L&S) 75]]. Nevertheless the school discharges a public duty of imparting education which is a fundamental right of the citizen [see K. Krishnamacharyulu v. Sri Venkateswara Hindu College of Engg. [K. Krishnamacharyulu v. Sri Venkateswara Hindu College of Engg., (1997) 3 SCC 571 : 1997 SCC (L&S) 841]]. The school affiliated to CBSE is therefore an “authority” amenable to the jurisdiction under Article 226 of the Constitution of India[see Binny Ltd. v. V. Sadasivan [Binny Ltd. v. V. Sadasivan, (2005) 6 SCC 657 : 2005 SCC (L&S) 881]]. However, a judicial review of the action challenged by a party can be had by resort to the writ jurisdiction only if there is a public law element and not to enforce a contract of personal service. A contract of personal service includes all matters relating to the service of the employee — confirmation, suspension, transfer, termination, etc. [see Apollo Tyres Ltd. v. C.P. Sebastian [Apollo*



*Tyres Ltd. v. C.P. Sebastian, (2009) 14
SCC 360 : (2009) 5 SCC (Civ) 358 :
(2010) 1 SCC (L&S) 359] J.”*

15. Having considered the rival submissions and after going through the records, it appears that the petitioner has filed the present writ petition against the order of termination dated 07.05.2022, by which his services are said to have been illegally terminated on the wrong facts and without any enquiry. Some consequential reliefs, including reinstatement of the petitioner have been prayed for in the writ petition.

16. From the counter affidavit filed on behalf of the respondent nos. 7 and 8, it would transpire that the issue of maintainability has been raised in the writ petition and at the time of argument on 10.09.2024, the respondents raised an objection with regard to maintainability of the writ petition in view of the judgment of Full Bench of this Hon'ble Court in the case of ***Manju Devi vs District Superintendent of Education, Bhagalpur & Ors. reported in 1987 PLJR 962 (Full Bench)***.

17. When the matter was taken up before this Court, the issue of maintainability was again raised on 18.06.2026. The matter was heard at length on the issue of maintainability and has been fixed for orders on 09.07.2026.

18. The Hon'ble Supreme Court of India in recent



judgments, which have been relied upon by the learned counsel appearing on behalf of the respondents i.e. St. Mary's Education Society (supra) and Army Welfare Education Society, New Delhi (supra) considered all the judgments referred to and relied upon by the learned counsel for the petitioner. From perusal of the judgments referred to by the learned counsel for the petitioner in the case of *Ramesh Ahluwalia* (supra), it would transpire that that same has been held to be *per incuriam* by the Hon'ble Supreme Court of India in the case of St. Mary's Education Society (supra), therefore this case cannot be relied upon for holding the writ petition to be maintainable.

19. So far the judgment relied upon by the learned counsel for the petitioner i.e. *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust* (supra) the same has been considered by the Hon'ble Supreme Court of India in the case of St. Mary's Education Society (supra) and Army Welfare Education Society, New Delhi (supra) and after considering all the relevant judgments, including *Andi Muka Sadguru (supra)* the Supreme Court of India in a case of St. Mary's Education Society (supra) in paragraph nos. 75 to 75.5 has held as follows:-

“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 a public function, it must be established that the body or the person was seeking to achieve the same for the collective benefit of the public or a section of it and the authority to do so must be accepted by the public.*

75.2. *Even if it be assumed that an educational institution is imparting public duty, the act complained of must have a direct nexus with the discharge of public duty. It is indisputably a public law action which confers a right upon the aggrieved to invoke the extraordinary writ jurisdiction under Article 226 for a prerogative writ. Individual wrongs or breach of mutual contracts without having any public element as its integral part cannot be rectified through a writ petition under Article 226. Wherever Courts have intervened in their exercise of jurisdiction under Article 226, either the service conditions were regulated by the*



statutory provisions or the employer had the status of "State" within the expansive definition under Article 12 or it was found that the action complained of has public law element.

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



ordinary contract of service.

75.4. *Even if it be perceived that imparting education by private unaided school is a public duty within the expanded expression of the term, an employee of a non-teaching staff engaged by the school for the purpose of its administration or internal management is only an agency created by it. It is immaterial whether "A" or "B" is employed by school to discharge that duty. In any case, the terms of employment of contract between a school and non-teaching staff cannot and should not be construed to be an inseparable part of the obligation to impart education. This is particularly in respect to the disciplinary proceedings that may be initiated against a particular employee. It is only where the removal of an employee of non-teaching staff is regulated by some statutory provisions, its violation by the employer in contravention of law may be interfered with by the Court. But such interference will be on the ground of breach of law and not on the basis of interference in discharge of public duty.*

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



the action was essentially of a private character.”

20. Similarly, the Hon’ble Supreme Court of India in the case of *Army welfare Education Society, New Delhi (supra)* and *St. Mary’s Education Society (supra)* after considering the different judgments relied upon by the learned counsel for the petitioner herein in paragraph nos. 61 to 64 distinguished the case of *Marwari Balika Vidyalaya (supra)* and went on to allow the writ petition filed by the Army Welfare Education Society, New Delhi (supra) with regard to maintainability of dispute with regard to service condition of the petitioner therein.

21. In view of the settled proposition of law and in view of recent judgments of the Hon’ble Supreme Court of India in the case of *St. Mary’s Education Society (supra)* and *Army Welfare Education Society, New Delhi (supra)*, this Court is of the considered opinion that the writ petition filed by the petitioner with regard to termination of his service cannot be maintained before this Hon’ble Court. The college in question i.e. M.M. Rahmani, B.Ed. College, Begusarai is an affiliated college of the University and in terms of the orders/judgments relied upon by the learned counsel for the respondents, the writ petition cannot be maintained against an affiliated college, since



the same is not a State within the meaning of Article 12 of the Constitution of India.

22. The writ petition filed by the petitioner is thoroughly misconceived and is accordingly dismissed.

23. Pending application, if any, shall also stands disposed of.

(Ritesh Kumar, J)

Ajay/Shital/-

AFR/NAFR	
CAV DATE	NA
Uploading Date	09.07.2026
Transmission Date	NA

