

30th June, 2026
(D/L No.11)
Ct. No.4
(SKB)

F.M.A. 685 of 2022
With
CAN 1 of 2026

Dr. Kamaleh Jain
Vs.
Digambar Jain Valika Vidyalaya
(Secondary Education) and another

Mr. Krishna Das Poddar,
Mr. Amit Kumar Dutta
... for the appellant.

1. The affidavit of service is taken on record.
2. Heard the learned advocate for the appellant/writ petitioner.
3. The appellant claims to be an Assistant Teacher of a D.A. getting school, appointed in the year 1984. According to the appellant, she retired in 2010.
4. It is the claim of the appellant/writ petitioner that though she was a teacher in a D.A. getting school, she was never paid the due salary along with benefit of D.A. The claim for such benefit was raised in a writ petition filed in the year 2021. The Hon'ble Single Judge had dismissed the writ petition by holding that the claim raised in the writ petition to be stale. The learned Single Judge held that such claim would be barred even in a money suit and, therefore,

dismissed the writ petition with a cost of Rs.5,000/-.

5. The appellant's service was approved by the District Inspector of Schools. The school was a D.A. getting school. She was entitled to D.A. on the salary which was denied to her throughout her career. She was also getting a pension from the government authorities.
6. The learned advocate for the appellant/writ petitioner submits that since the appellant was a teacher in a D.A. getting school, the claim of the appellant was required to be considered for issuance of an order in the nature of a writ of mandamus.
7. Since the nature of claim raised by the appellant/petitioner was having a public law element, the petitioner/appellant was entitled to remedy under Article 226 of the Constitution of India writ jurisdiction, where the proceeding is not circumscribed by the provisions contained in the Limitation Act.
8. The appellant/petitioner was paid gratuity on 09.04.2021. The same is founded on salary. Therefore, the petitioner's/appellant's claim for salary before the writ court was not hit either by an issue of limitation, or delay and latches.

9. Reliance is placed on a decision of the Hon'ble Apex Court in the case of ***Ahmedabad Women Action Group (AWAG) and others Vs. Union of India*** reported in ***(1997)3 SCC 573***. The learned advocate also relied upon another decision of the Hon'ble Apex Court in ***Civil Appeal No.9166 of 2013*** in the case of ***Marwari Balika Vidyalaya Vs. Asha Srivastava and others***. The order of the Hon'ble Apex Court is dated 14.02.2019. Copy of the order has handed over us.

10. We have considered the submissions advanced on behalf of the appellant/writ petitioner, and the judgments.

11. Insofar as the submission of the learned Advocate for the writ petitioner/appellant that the petitioner was a teacher in a D.A. getting school and that she was receiving pension from the office of the Accountant General, we find that there is no document annexed with the writ petition in support of such submissions. Even the averments made in this regard do not inspire any confidence as the same is bereft of any details whatsoever. We also find that the writ petitioner has chosen not to implead any state authority as a respondent in the writ petition. The relief has been claimed only

against the private school wherein she claims that she was appointed and discharged her duties.

12. It is by now a well settled legal proposition that the writ petitioner must plead and prove the facts with reference to the documentary evidence annexed to the writ petition. If the facts are not pleaded and the evidence in support is not annexed the writ court will not entertain such a point. The Apex Court has held that there is a distinction between a pleading under the Code of Civil Procedure and a writ petition or a counter affidavit. The Apex Court held that in a writ petition, not only the facts but also evidence in proof of such facts have to be pleaded and annexed to it (***Bharat Singh &Ors. vs. State of Haryana &Ors.***, reported in **(1988) 4 SCC 534**).

13. In the present case, there is insufficient and vague pleading to support the contention of the writ petitioner that she was employed in a D.A. getting school, or that she was ever paid pension by any state authority. There is no basis for the learned Advocate for the writ petitioner/appellant to submit that there is any element of public law involved in the present case justifying invocation of writ jurisdiction.

14. In the judgment of the Hon'ble Apex Court in the case of **Ahmedabad Women Action Group (supra)**, we find that the Apex Court has taken into consideration that there was executive instructions issued by the government which gave the appellant therein a right to claim pay parity. In the case of **Marwari Balika Vidyalaya (supra)** also the Hon'ble Apex Court considered the fact that there was no dispute therein that the petitioners had been appointed with an approval of the authorities and, therefore, the removal without such approval was found to be unsustainable.

15. As noticed above from the writ petition, we find that there is no such case made out with reference to any material whatsoever. Even the State authorities have not been impleaded as the respondents. The reliance placed on these two judgments, therefore, in the present facts and circumstances, which are distinguishable is not tenable. We find no case made out involving a public law element by the appellant/writ petitioner. The writ petition as framed is against a private school.

16. We, therefore, find no reason to interfere with the decision of the learned Single Judge.

17. The appeal is dismissed.

18. The application being CAN 1 of 2026 is,
thus, disposed of.

(Madhuresh Prasad, J.)

(Prasenjit Biswas, J.)