

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Rai Chattopadhyay

WPA 5289 of 2008

(CAN 1 of 2011)

Bhaswati Chakraborty

Vs.

State of West Bengal and Ors.

For the Petitioner

: Mr. Avijit Chakraborty

: Mr. Subhankar Nag

For the School Authority

: Mr. Milan Chandra Bhattacharya

: Mr. H.S. Chakraborty

: Ms. Salogna Bhattacharya

: Ms. Priyanka Chandra

For the State

: Ms. Munmun Tewary

: Mr. Sanatan Panja

: Ms. S. De

Judgment on

: 10.06.2026

Uploaded on

: 10.06.2026

Rai Chattopadhyay, J. :-

- 1.** Admittedly, the writ petitioner has been a teacher of a school namely, St. Helen School, which is not a recognized or aided school by the Government of West Bengal.
- 2.** The instant writ petition has been filed challenging her allegedly illegal termination order vide letter dated January 21, 2008 issued by the respondent No. 6/the Rector cum Secretary of the Managing Committee of the said school. The petitioner has sought for the relief that this Court may pass order after setting aside of the impugned termination letter of the petitioner, directing the respondent school to allow her to join in duties with all consequential benefits including benefit of continuity of service and also for payment of salary including arrear salary.

3. From the record, it appears that the petitioner joined to the post of Assistant Teacher in the said school on and from September 02, 1994. According to the petitioner, the school is a “listed school” under the “Code of Regulations for Anglo Indian and other listed Schools, 1993” Hence, in accordance with the terms of the said Code of 1993, the respondent school should have followed the due procedure prescribed thereunder, before terminating her service, she being a permanent and confirmed teacher.
4. The petitioner’s other contention is that the school being engaged for educating the children and young adults of the society, is discharging public function and becomes amenable to the jurisdiction of this Court under Article 226 of the Constitution of India. She has stated that, therefore, due to violation of her Fundamental Right of Life for the reason of illegal termination by the school authority, which she has addressed to be an authority within the ambit of Article 12 of the Constitution of India, the present writ petition of her is amenable before this Court and necessary order may be passed by this Court. According to the petitioner, the school is a “listed school” according to Regulation 2(10), 2(12) and 10 of the Code of 1993.
5. On merits, the writ petitioner has contended and alleged that, in spite of diligent service rendered by her since the date of her appointment in the school, school authority has acted mala fide and arbitrarily by terminating her service that too, in gross violation of the governing Rules and Regulations. She has submitted that, neither any show-cause notice or charge sheet was issued to her nor her explanation was ever called for on any kind of alleged misconduct. She says that no hearing has been ever granted to her by the school authority before terminating her service. Therefore, according to the petitioner, the act of termination of service of her by the school authority is due to gross misuse of power and violation of principles of natural justice. A departmental enquiry which is a mandate under the governing Regulations and proof of misconduct of the delinquent in a duly constituted departmental enquiry being the mandatory precondition for termination of service of a teacher in accordance with the governing Regulations, the petitioner could not have been terminated without following the said procedure as

prescribed and without conducting any disciplinary proceeding to prove her misconduct, if any.

- 6.** For the reasons inter alia as above, the petitioner has filed an instant writ petition to seek relief as stated above.
- 7.** Mr. Avijit Chakraborty, learned advocate has represented the writ petitioner in the case. He has relied on the guidelines framed by the Council for the Indian School Certificate Examinations, New Delhi in a meeting dated April 28, 2006. He relies on Clause 5(b)(4) thereof to submit that the Managing Committee is empowered to initiate disciplinary proceeding against an employee to result into his or her dismissal, removal of service or reduction in rank, on proof of the misconduct.
- 8.** Further, reliance has been placed on the Gazette Notification dated December 24, 1993 as mentioned above. He specifically points out that the present institution being a “listed school”, the same is bound by the Regulations framed under Code of 1993, by virtue of Regulation 2(b) under Chapter 1 thereof. Regulations 23 and 24 have been specifically relied on to submit that procedure for disciplinary action against a confirmed staff and in the incident of termination of a confirmed staff have been provided thereunder. It is submitted that in order to justify legality and validity of termination of a confirmed school teacher, the respondent school authority has to satisfy the Court about due compliance with the provisions as enumerated under Regulations 23 and 24 of the said Code of 1993.
- 9.** It is further submitted that in such circumstances, the respondent school authority could not have terminated the service of the writ petitioner without following the specific provisions therefor as prescribed and otherwise termination of the petitioner is illegal and such order is liable to be set aside.
- 10.** Learned advocate for the petitioner has relied on a letter dated July 26, 1985 issued by the Deputy Secretary to the Government of West Bengal to the Director of the School Education, Government of West Bengal on the said matter of issuance of No Objection Certificate to the respondent school for its affiliation to the Council for Indian School Certificate Examinations, New Delhi.

- 11.** In support of contentions, Mr. Chakraborty, learned advocate has relied on the following judgments: -
- i) ***Federal Bank Ltd. Vs. Sagar Thomas and Ors.*** reported in **(2003) 10 SCC 733**
 - ii) ***St. Mary's Education Society and Anr. Vs. Rajendra Prasad Bhargava and Others*** reported in **(2023) 4 SCC 498**
 - iii) ***T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others*** reported in **(2002) 8 SCC 481**
- 12.** The respondent's principal contention is with regard to non-maintainability of the instant writ petition. The respondent is represented by Mr. Milan Chandra Bhattacharya, learned advocate. It has been submitted that the respondent school is an unrecognized and unaided school which runs entirely privately, on the fund generated by itself. That, neither the Service Rules of the Government employees nor any benefit is applicable in case of the teachers or employees of the respondent school. The respondent has also rejected the petitioner's plea that the school is either an Anglo Indian School or a "listed school" within the meaning of the Code of 1993. It is submitted that the school is a private institution, solely run and managed by the Managing Committee thereof and is not amenable to jurisdiction of this Court under Article 226 of the Constitution of India.
- 13.** The respondent school authority has particularly relied on a judgment of this Court dated October 03, 2002 in W.P. No. 19212W of 2001 in which the petitioner was one of the respondents (No. 27). By specifically relying on the order of the Court as above, the respondent school has submitted that the non-maintainability of the proceeding concerning the said school before this Court in exercise of jurisdiction under Article 226 of the Constitution of India has been categorically upheld by this Court vide the said order as mentioned above. That, the respondent school shall not be amenable to the writ jurisdiction of this Court as has been upheld by this Court earlier in the said order and the present petitioner being a party in the said earlier writ petition, is fully knowledgeable about the said fact. In such circumstances, the respondent school authority has alleged about suppression of material fact by the writ petitioner by not

disclosing the finding of the Court already made in the order as above.

14. Further, it has been submitted that the school being not within control of the State Government either concerning its management or due to grant of any financial aid, no public law remedy can be enforced against the respondent school authority.
15. For the reasons as above, the respondent school has insisted that the instant writ petition may be dismissed.
16. In support of contentions, Mr. Bhattacharya, learned advocate has relied on the following judgments: -
 - i) ***Dipak Kumar Basu Vs. Director of Public Instruction & Ors.*** reported in **(1987) 2 SCC 252**
 - ii) ***Vidyaram Mishra Vs. Managing Committee Jai Narain*** reported in **(1972) 1 SCC 623**
 - iii) ***Ramesh Aluwalia Vs. State of Punjab*** reported in **(2012) 12 SCC 331**
 - iv) ***K. K. Saxena Vs. International Commission on Erection and Drainage & Ors.*** reported in **(2015) 4 SCC 670**
 - v) ***Janet Jeyapaul Vs. S. R. University & Ors.*** reported in **(2015) 16 SCC 530**
 - vi) ***Committee of Management of Delhi Public School & Anr. Vs. M.K. Gandhi & Ors.*** reported in **(2015) 17 SCC 353**
 - vii) ***Kailash Singh Vs. Managing Committee, Mayo College Ajmeer & Ors.*** reported in **(2018) 18 SCC 216**
 - viii) ***Trigun Chand Thakur Vs. State of Bihar*** reported in **2019 (7) SCC 513**
 - ix) ***Marwari Balika Vidyalaya Vs. Asha Srivastava & Ors.*** reported in **2019 SCC OnLine SC 408**
 - x) ***Shukla Ghosal Vs. Principal, Park English School*** reported in 2010 (1) CHN 760

- xi) ***Debjani Bose Vs. State of West Bengal & Ors.*** reported in ***2000(2) CLT 435***
- xii) ***Vijay Shankar Dikshit Vs. State of West Bengal*** reported in ***2011(1) CHN 174***
- xiii) ***Banshi Jana Vs. State of W.B. & Ors.*** in ***W.P. No. 40 of 2017*** dated ***July 30, 2019***
- xiv) ***Secretary M.C., maharishi Vidya Mandir Vs. Miss Viswadhara Nag & Ors.*** in ***CAN No. 2555 of 2016 in MAT No. 1935 of 2015*** dated ***July 31, 2018***
- xv) ***Srikanta Maity Vs. State of West Bengal*** in ***W.P. No. 1407 (W) of 2018*** dated ***June 05, 2018***

17. Appointment of the petitioner in the school and her continuous service till the time she has been issued with the dismissal letter, are undisputed facts in the instant writ petition. Subsequently, she has been issued with the termination letter dated January 21, 2008 which speaks as follows: -

"Ref.: Ter./01/2007-2008

January 21, 2008

***** ** ****

Sub.: Termination from Service

***** ** ****

This is to inform you that, you have joined as an Assistant Teacher of St. Helen School at 21B, Rani Shankari Lane, P.S. Kalighat, Kolkata-700026, which is a Non Government Private School.

That you are working as an Assistant Teacher attending in Classes as a History Teacher. Due to insufficient student in History in the senior classes at 21B, Rani Shankari Lane, Kolkata-700026 you have been transferred in our Sonarpur Unit for the interest of both School and teacher. Although you have joined in Sonarpur Unit but you are not taking any interest in your job which is negligence for duty. (As per rules SL 9 of your Service Agreement signed by you on 1.9.1995)

Moreover, due to insufficient students of History (no. of students 06 in the academic session 2007-2008) in Senior Classes in main branch we have decided to abolish the Arts Stream henceforth (See Sl. 8 (c) in your Service Agreement signed by you on 1.9.1995).

Under the above circumstances you are terminated from your service with effect from 22.01.2008 a.m.

You are also requested to deposit the School Property if any in your custody to the Principal Authority concerned and we are enclosing herewith two A/C payee cheques (one is for the current month salary upto 21.01.2008) and another for three months' Notice Pay (as per rule 3 of Service Agreement) vide cheque no. 802364 for Rs. 4,183/- (Rupees four thousand one hundred eighty three only), and vide cheque no. 802365 for Rs. 20,951/- (Rupees twenty thousand nine hundred fifty one only), dated 21/01/2008, drawn on Bank of Baroda, Charu Market, Kolkata-700033 respectively."

18. The respondent authority has raised the point of non-maintainability of the instant writ petition due to the fact that the respondent school being an unrecognized and unaided institution is not to be covered under Article 226 of the Constitution or is not amenable to any public law remedy.
19. It is the time tested and said law that writ is a public law remedy and is available only against State or those who perform statutory duties or public duties in the instant case the respondent school being neither a recognized institution in the State nor an aided one, cannot be considered to be amenable to writ jurisdiction not being a State or any instrumentality of State.
20. In this regard, the verdict of this Court in **W.P. No. 19212W of 2001 (St. Helen School and Others Vs. State of West Bengal and Others**, vide judgment **dated October 03, 2002)** also appears to be binding in case of the present petitioner, in which the Court has found the writ petition filed by the petitioner therein to be not maintainable, the writ petitioner being a private institution, not recognized and aided by the State Government. The Court in the said writ petition has passed an order dismissing the same. The present petitioner being one of the parties in the same, is bound by the order of the Court as above.
21. The judgment dated October 03, 2002, passed in W.P. No. 19212(W) of 2001 attained finality long ago and there is no material before this Court to suggest that the same was ever challenged before a superior forum or otherwise set aside. The present petitioner admittedly figured as respondent no. 27 in the said proceeding and was, therefore, a party to the litigation in which the nature and status of the respondent school and the issue of maintainability of proceedings under Article 226 of the

Constitution against the said institution were directly examined by this Court. A judicial determination rendered by a competent Court, once it attains finality, is binding upon the parties thereto and cannot be permitted to be collaterally questioned in a subsequent proceeding. The doctrine of finality of litigation, which is founded upon considerations of public policy, certainty in administration of justice and avoidance of multiplicity of proceedings, requires that issues conclusively determined between the parties should not be reagitated except in a manner known to law. The petitioner, having been a party to the earlier proceeding and having allowed the said judgment to attain finality, cannot now seek to contend to the contrary by inviting this Court to reopen the very question concerning the amenability of the respondent school to writ jurisdiction. In the absence of any subsequent change in the legal character of the institution or any overriding statutory development, the findings recorded in the judgment dated October 03, 2002, continue to bind the petitioner and constitute a significant additional reason for declining to entertain the present writ petition.

- 22.** It is further to be noted that the letter relied upon by the petitioner dated July 26, 1985 is with regard to affiliation of the school under the Council which does not ipso factor render the school to be a State or its instrumentality excepting any substantial corroborating material regarding the supervision and control exercised by the Court over the affairs of the school including the financial affairs. As a matter of fact, for the respondent school, no such control by the Government over its affairs is evident including any financial support. So far as this fact is concerned, that the respondent school is an unrecognized and unaided school, remains to be an undisputed fact in the instant writ petition.
- 23.** The issue of maintainability raised by the respondent school authority is no longer res integra. The consistent line of authority of the Hon'ble Supreme Court has drawn a clear distinction between institutions which are subject to deep and pervasive governmental control or are entrusted with enforceable public duties under statute, and institutions which merely perform an activity beneficial to society but remain privately managed,

unaided and unregulated in matters concerning service conditions of their employees. The respondent school falls squarely within the latter category. In **Vidyaram Mishra(supra)**, the Supreme Court held that a writ of mandamus cannot ordinarily be issued to enforce a contract of personal service against a private educational institution. The Court recognised only limited exceptions to the general rule, namely where the employee is a public servant, where industrial law remedies apply, or where a statutory body acts in breach of mandatory statutory obligations. The petitioner's grievance in the present case essentially arises out of the termination of her employment by a private educational institution and is therefore rooted in a contractual relationship. No statutory status of employment has been demonstrated. Consequently, the ratio of the said judgment directly supports the respondent's objection regarding maintainability.

24. The principle was reiterated in **Dipak Kumar Basu (supra)**, where the Supreme Court declined to entertain a service dispute involving a teacher of a private educational institution in the absence of any statutory right capable of enforcement through writ jurisdiction. The present petitioner likewise seeks reinstatement, continuity of service and salary benefits arising from an employer-employee relationship. The rights asserted are not shown to emanate from any statutory provision having the force of law. Therefore, the rationale of **Dipak Kumar Basu (supra)** too applies in this case. Similarly, significant guidance is also available from **K.K. Saxena (supra)**. The Supreme Court exhaustively analysed the circumstances in which a writ may issue against a non-State entity and held that mere performance of activities having public importance is not sufficient. The public duty sought to be enforced must possess a statutory or public law character. The Court further explained that disputes founded upon private contracts remain outside the domain of judicial review under Article 226. In the present case, the petitioner seeks enforcement of service conditions allegedly flowing from contractual arrangements and internal regulations of the institution. The relief sought does not involve enforcement of any statutory public duty. Hence, the ratio of **K.K. Saxena (supra)** furnishes a complete answer to the petitioner's claim. Equally instructive is the decision in **M.K. Gandhi (supra)**. The Supreme

Court held that disputes relating to service conditions of employees of unaided private schools cannot automatically be transformed into public law disputes merely because the institution is engaged in imparting education. The educational activity may have societal significance, but service disputes between the management and employees remain essentially private in character unless governed by a statutory regime. The factual foundation of the present case is substantially similar, since the respondent institution admittedly receives no governmental aid and the dispute concerns termination of a teacher's service. The subsequent decisions in **Kailash Singh (supra)**, **Trigun Chand Thakur (supra)** and **Marwari Balika Vidyalaya (supra)**, further reinforce the principle that private educational institutions do not become amenable to writ jurisdiction in service matters merely because they are engaged in educational activities. The Supreme Court repeatedly emphasised that the existence of a private contract of employment cannot be converted into a public law cause of action unless a statutory duty is shown to have been violated. No such statutory duty has been established by the petitioner in the instant proceeding.

25. On the other hand, the authorities cited by the petitioner do not advance her case when examined in their proper factual and legal context. In **Federal Bank Ltd. (supra)**, the Supreme Court indeed recognised that a writ may lie against a private body in exceptional circumstances where a public duty is sought to be enforced. However, the Court simultaneously held that a private body does not become amenable to writ jurisdiction merely because its activities affect the public. Far from assisting the petitioner, the judgment supports the respondent's contention because no public duty owed by the respondent school to the petitioner has been identified. The dispute concerns termination of employment and not enforcement of any public obligation.
26. The reliance placed on **T.M.A. Pai Foundation (supra)** is also misplaced. The Constitution Bench in that case was concerned with the autonomy and rights of private educational institutions under Articles 19 and 30 of the Constitution and the permissible extent of governmental regulation in the educational sector. The controversy therein neither involved the maintainability of a writ petition by an employee against an unaided private school nor the

enforceability of a private service contract through writ jurisdiction. The principles laid down therein, therefore operate in an entirely different field and have no direct application to the issue presently under consideration. The judgment in ***St. Mary's Education Society (supra)*** is equally distinguishable. In that decision, the Supreme Court examined the scope of writ jurisdiction against educational institutions in the backdrop of the nature of duties performed and the statutory framework governing the institution concerned. The Court did not lay down any proposition that every private school, irrespective of recognition, aid, statutory control or governmental supervision, becomes amenable to writ jurisdiction in service disputes. Rather, the decision reiterates that the existence of a public duty remains the governing test. In the present case, the petitioner has failed to demonstrate any statutory obligation or public duty enforceable against the respondent school in relation to her service conditions.

27. The petitioner's principal argument rests upon the Code of Regulations for Anglo-Indian and Other Listed Schools, 1993 and certain guidelines of the Council for the Indian School Certificate Examinations. Even assuming such provisions contemplate procedural safeguards in disciplinary matters, they do not by themselves confer statutory status upon the respondent institution or transform every alleged breach thereof into a public law wrong. The petitioner has not been able to establish that the said provisions possess statutory force so as to create an enforceable public duty within the meaning explained by the Supreme Court in the authorities discussed above. Consequently, the alleged violation of such regulations cannot, by itself, furnish a foundation for invoking the extraordinary writ jurisdiction of this Court.
28. Viewed from any angle, therefore, the judgments relied upon by the respondent lay down principles which are directly attracted to the facts of the present case, whereas the authorities cited by the petitioner arise in materially different factual and legal settings and are therefore distinguishable. Applying the ratio of the aforesaid Supreme Court decisions, this Court is unable to hold that the respondent school, admittedly being an unaided and

unrecognised private institution, is amenable to writ jurisdiction in relation to the service dispute raised by the petitioner.

- 29.** On merits the petitioner's entire case rests on the Code of Regulations for Anglo-Indian and Other Listed Schools, 1993. However, before any question of violation of Regulations 23 and 24 can arise, the petitioner was required to establish, by cogent materials, that the respondent institution answers the description of a "listed school" within the meaning of the Code of 1993 and that the provisions relied upon possess statutory force binding upon the institution. Except making a bare assertion in the writ petition, no conclusive material has been produced to establish either of the aforesaid facts. In absence thereof, the Court is unable to proceed on the basis that the service relationship between the parties was governed by statutory regulations enforceable in public law.
- 30.** The very foundation of the writ petition rests upon the petitioner's assertion that the respondent institution is a "listed school" within the meaning of the Code of Regulations for Anglo-Indian and Other Listed Schools, 1993 and is consequently bound by the provisions contained therein relating to disciplinary action and termination of service of teachers. However, such assertion has been categorically disputed by the respondent school authority in its opposition. The respondent has consistently maintained that the institution is neither a recognised school nor an aided institution and has further denied that it answers the description of a "listed school" so as to attract the applicability of the Code of 1993. In spite of such specific denial, the petitioner has failed to place before this Court any conclusive or unimpeachable material demonstrating that the respondent school has been duly notified, declared or otherwise recognised by the competent authority as a "listed school" under the said Code. Mere reliance upon a Government communication dated July 26, 1985 regarding issuance of a No Objection Certificate for affiliation to the Council for the Indian School Certificate Examinations or upon the fact of such affiliation cannot automatically establish that the institution acquired the legal status of a "listed school" under the Code of 1993. Affiliation to an examining body and inclusion within a statutory or regulatory category are distinct concepts operating in different fields. The burden of establishing the applicability of the

Code of 1993 squarely rested upon the petitioner, since the entire challenge to the termination order is founded upon the alleged violation of the provisions thereof. In the absence of satisfactory evidence establishing that the respondent institution is governed by the said Code, this Court cannot proceed on the assumption that Regulations 23 and 24 thereof are attracted to the service conditions of the petitioner.

- 31.** Even assuming for the sake of argument that certain administrative instructions, guidelines or regulatory provisions were applicable to the respondent institution, the petitioner has not been able to demonstrate that such provisions possess statutory force so as to create an enforceable public duty amenable to judicial review under Article 226 of the Constitution. The distinction between a statutory obligation and a contractual or administrative obligation is of considerable significance while examining the maintainability of a writ petition. Unless the source of the right asserted and the corresponding duty sought to be enforced can be traced to a statute or to an obligation of public law character, the remedy under Article 226 cannot ordinarily be invoked for adjudication of disputes arising out of a private contract of employment. Therefore, the petitioner's failure to establish either the legal status of the respondent institution as a "listed school" or the statutory character of the regulations relied upon by her constitutes an additional and independent ground for declining to entertain the present writ petition.
- 32.** Considering all as discussed above, the Court finds that the writ petition is to be dismissed being not maintainable before this Court while exercising writ jurisdiction. It is however clarified that this Court has not adjudicated upon the correctness or legality of the termination on merits. The dismissal of the writ petition proceeds solely on the ground that the dispute, as framed, is not amenable to adjudication under Article 226 of the Constitution. The petitioner shall be at liberty to pursue such remedies before the competent civil forum as may be available in law. Since this Court has declined to entertain the writ petition on the ground of non-maintainability, it has not examined the legality of the termination on its merits. Any remedy available to the petitioner

in accordance with law before an appropriate forum shall remain unaffected by this judgment.

- 33.** Hence, the writ petition No. WPA 5289 of 2008 stands dismissed. Application pending if any, stands disposed of.
- 34.** Urgent certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)