

15.01.2026
Item No.02
Court No.11
Avijit Mitra

**MAT 1404 of 2025
with
IA No.CAN 1 of 2025**

**The Managing Committee of Shree Balkrishna
Vithalnath Vidyalaya & ors.
- Versus -
Ashish Kumar Tiwari & ors.**

Mr. Piush Chaturvedi, Sr. Adv.,
Mr. Tarun Kumar Das,
Mr. Dilip Kumar Shyamal,
Mr. Pratap Kumar Yadav
....for the appellant

Mr. Supriyo Chattopadhyay,
Ms. Tuli Sinha
....for the State

Mr. Subir Sanyal, Sr. Adv.,
Mr. Sutirtha Das,
Mr. Trijit Mitra
....for the writ petitioner/respondent

Ms. Koyeli Bhattacharyya,
Mr. Bibek Dutta
....for the WBBSE

This appeal is directed against that part of the order dated 11th August, 2025 passed in WPA 4793 of 2024, by which the preliminary objection regarding the maintainability of the writ petition, raised on behalf of the school authority, was rejected, and the order dated 12th December, 2023 directing the writ petitioner to refund the remuneration drawn by him from the date of his appointment was stayed.

Mr. Chaturvedi, learned senior advocate appearing for the appellant, submits that the writ petition was filed by a member of the teaching staff of Shree Balkrishna Vithalnath Vidyalaya (hereinafter referred to as 'the school'), a D.A.-getting school, challenging the legality of the termination order. He contends

that the relationship between the management and its staff is purely private in nature and governed by a contract. Therefore, according to him, a writ petition arising out of disciplinary action taken by the management against a staff member of the said school is not amenable to writ jurisdiction, as no public law element is involved. On this premise, he submits that the issue of maintainability was rightly raised by the school authorities at the very threshold.

However, he contends that the learned Single Judge, while referring to an order passed in another writ petition, being WPA 12447 of 2022 (*Priya Chatterjee vs. State of West Bengal & Ors.*), rejected the contention of the school authorities by observing that an intra-court appeal had been filed challenging the said order and that the order passed in *Priya Chatterjee* had not been interfered with in such appeal. He submits that the said observation of the learned Single Judge is factually incorrect.

Referring to the order dated 7th May, 2024 passed in FMA 1075 of 2024, he submits that the issue of maintainability of the writ petition filed by *Priya Chatterjee* was kept open. Therefore, the decision in *Priya Chatterjee's* case cannot be said to have attained finality. According to Mr. Chaturvedi, reliance placed on the said decision is misplaced. He further submits that the issue so raised was glossed over, and such infirmity warrants interference by this Court in the present appeal.

In rebuttal, Mr. Das, learned advocate appearing for the writ petitioner/respondent no. 1, contends that it is no longer *res integra* that a writ petition filed by a member of the teaching or

non-teaching staff of a D.A.-getting school, in relation to disciplinary action taken against him by the school authorities, is maintainable. He submits that, keeping this settled position of law in view, the learned Single Judge has rightly held that such a writ petition is maintainable.

Ms. Sinha, learned advocate and Ms. Bhattacharya, learned enter appearance on behalf of the State respondents and the Board.

Heard the learned advocates appearing for the respective parties and perused the materials on record placed before us.

As previously noted, in the order under challenge in this appeal, the preliminary issue of maintainability of the writ petition urged on behalf of the school authority is negated relying upon the decision rendered in the writ petitions preferred by Priya Chatterjee and in that order, it was observed the order passed in Priya Chatterjee's case was tested before the Hon'ble Division Bench in FMA 1075 of 2024 but the order passed in Priya Chatterjee's case was not interfered with.

A perusal of the order dated 25th June, 2024 passed in writ petition filed by Priya Chatterjee, being WPA 735 of 2024, reveals that in the said order, referring to the decisions in *Marwari Balika Vidyalyaya vs. Asha Srivastava & Ors.* reported in (2020) 14 SCC 449 and *St. Mary's Education Society & Anr. vs. Rajendra Prasad Bharagava & Ors.* reported in 2022 SCC OnLine SC 1091, the learned Single Judge held that such a writ petition is maintainable.

However, in the order dated 7th February, 2025 passed in FMA 1075 of 2025, an intra-court appeal preferred challenging the order dated 25th June, 2024 in *Priya Chatterjee's* case (supra), the following observation was made:

“We made it clear that in the event the writ petition is ultimately held to be not maintainable the writ petitioner may be directed to refund the salaries to be received during the pendency of the writ petition. The reinstatement of the writ petitioner and discharge of her duty in school shall abide by the result of the writ petition.”

Therefore, the observation in *Priya Chatterjee* (supra) relating to the maintainability of that writ petition has not attained finality.

In view thereof, the order impugned in the instant appeal is modified to the extent that the issue of maintainability of the writ petition, being WPA 4793 of 2024, is kept open and shall be decided by the learned Single Judge at the time of final hearing of the writ petition. However, as no other issue has been raised by the appellant, this Court is not inclined to interfere with the remaining portion of the said order.

We are not oblivious to the fact that, during the pendency of the appeal, the time fixed by the learned Single Judge for exchange of affidavits in respect of the writ petition has expired. In view thereof, the time to file the affidavit-in-opposition to the writ petition is extended for a further period of three weeks. Reply thereto, if any, shall be filed within one week thereafter.

The parties would be at liberty mention the matter for enlistment and final hearing of the writ petitions before the learned single Judge after expiry of the period specified towards exchange of affidavits.

With the above observations and directions, the appeal and the connected application are thus disposed of.

There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)