IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU

Reserved on: 29.10.2026
Pronounced on: 19.11.2026

Uploaded on: 20.11.2026

Whether the operative part or full judgment is pronounced: ***Full***

SWP No.1477/2014
c/w
SWP No.2650/2015

SONI RAM DHAKA
CHET NARAYAN UPADHYAY & ORS.

...PETITIONERS/APPELLANT(S)

Through: - Mr. Sunil Sethi, Sr. Advocate, with
Mr. Ravi Abrol, Advocate (in SWP No.1477/2014)
Mr. Jasbir Singh Jasrotia, Advocate (in SWP No.2650/2015)

Vs.

UNION OF INDIA & ORS. ...RESPONDENT(S)

Through: - Mr. Sumant Sudan, Advocate, vice
Mr. Vishal Sharma, DSGI (in SWP No.1477/2014)
Mr. Ajay Sharma, Sr. Advocate, with
Mr. Naveed Naik, Advocate-for R2 to R6 (in SWP No.2650/2015)

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) By this common judgment, the afore-titled two writ petitions involving similar issues are proposed to be disposed of.

2) SWP No.1477/2014 has been filed by petitioner Soni Ram Dhaka seeking a direction upon the respondents to adopt service rules in conformity to State/UT/Central Education Act/affiliation bye-laws of Central Board of

Education to govern the day-to-day administration of the school and notify the rules so adopted for general information of all the concerned. A further direction commanding the respondents to promote the petitioner to senior scale and further selection scale and to release the same in favour of petitioner, has also been sought.

3) Vide SWP No. 2650/2015, filed by 42 petitioners, who are teaching/non-teaching staff working in BSF Senior Secondary School, Paloura, Jammu, a direction has been sought upon the respondents to implement the recommendations of 5th and 6th Central Pay Commission in letter and spirit and to release pay scales and other service benefits in favour of the petitioners at par with their counterparts working in other Central Schools and KV Sangathan Schools. Besides this, the petitioners have also sought release of arrears of salary and service benefits, with a further direction not to take any vindictive action including indiscriminate transfer of the petitioners.

4) The petitioners in both writ petitions are working as teaching/non-teaching staff in BSF Senior Secondary School, Paloura Camp, Jammu. It is case of the petitioners that the respondent school has been established by Border Security Force and it is affiliated to Central Board of School

Education. It has been submitted that the respondent school is being run and operated on the pattern of Kendriya Vidyalaya's run and operated by Kendriya Vidyalaya Sangathan. According to the petitioners, whole expenses of operating the respondent school are being incurred by BSF Foundation Education Fund, a society registered under Societies Registration Act. Apart from voluntary donations and subscriptions by permanent employees of BSF, the respondent school receives substantial amount in the shape of grant-in-aid from the Government of India and that the respondent school is affiliated to Central Board of School Education, thus legally bound to adhere to and strictly comply with the affiliation bye-laws promulgated by the CBSE.

HIGH COURT JAMMU & KASHMIR AND LADAKH

5) It has been submitted that the respondent school is fully aided, controlled and administered by Central Government on the pattern of Kendriya Vidyalas. It has been submitted that all the employees working in KV Sangathan, whether teaching or non-teaching, have all along been treated at par with Central Government employees in the matter of service benefits and pay scales. According to the petitioners, they are similarly situated and are performing similar duties as the teaching and non-teaching staff of KVs, but the respondents have all along denied them the benefit

of pay scales and other service benefits at par with counterparts working in KVs. It has further been submitted that the benefits of revised pay scales under 5th and 6th Pay Commission have not been extended to the petitioners. It has been contended that the respondent school is funded, managed and supervised by the authorities of BSF and Ministry of Home Affairs and the Union of India has a deep and pervasive control over the functioning of the respondent school. Thus, it is an instrumentality of the State amenable to the writ jurisdiction of this Court.

6) It has been submitted that as per the guidelines issued by CBSE, the petitioners are entitled to the pay scale and other service benefits as prescribed for the employees of Government of India/State Government, regarding which several communications have been addressed by the Secretary, CBSE, to all the schools. It has also been contended that the respondent school has now been permanently affiliated to CBSE under the category of Government schools, as such, it is bound by the affiliation bye-laws of CBSE. It has been submitted that vide Circular No. 20 of 2014 of CBSE, the payment of salary and other service conditions prescribed by Government of India is applicable to all staff of affiliated schools in terms of the bye-laws.

7) In brief, the petitioners in both the writ petitions have sought parity in respect of pay, allowances and other service benefits at par with the employees of Central Government/UT Government and staff of Kendriya Vidyalaya Sangathan. The basis for demanding this parity is that the respondent school is an institute controlled by the Government of India, which has a deep and pervasive control over its functioning. Therefore, the petitioners cannot be treated differently from the teaching/non-teaching staff of Central Government schools including Kendriya Vidyalaya Sangathan. Another basis for claiming relief against the respondent school is that as per the affiliation bye-laws of CBSE, an affiliated school is bound to pay same scales of pay to its teaching/non-teaching staff as is applicable to Central Government/State Government teachers.

8) The respondent school, in its reply to both the writ petitions, has raised a preliminary objection with regard to maintainability of the writ petitions on the ground that writ petition against the respondent school is not maintainable. It has been contended that BSF Education Fund Society, which runs the respondent school, is not under administrative, financial or functional control of any authority including Government of India. It has been submitted that as per the bye-laws of BSF Foundation Fund

Society, the Central Committee of BSF Education Central Committee of the society consists of President and members and they hold the position in ex-officio capacity. According to the respondents, the respondent school receives no financial aid/grant from Central or State Government. It is being run by the society and the source of income of BSF Education Fund is voluntary contribution of BSF jawans from their monthly salary and fee collected from students. It has further been submitted that annual budget of the society is being prepared by the society itself and there is no financial control over the BSF Education Fund by any external authority including Government. According to the respondents, no grant-in-aid is being received by the BSF Education Fund Society from the Government and the audit of the BSF Education Fund is being conducted by a registered Chartered Accountant and not by any Government agency. In short, the contention of the respondents is that the respondent school is not an entity which can be termed as 'State' within the meaning of Article 12 of the Constitution so as to make it amenable to the writ jurisdiction of this Court.

9) On merits, it has been submitted that salary and other benefits to teaching and non-teaching staff employed in the BSF Senior Secondary Schools are regulated by BSF

Education Code and decision of the Governing Body of BSF Education Fund Society. It has been submitted that pay scales of BSF school employees are on same pattern as applicable to Central Government/KVS employees as modified from time to time. It has been contended that at no stage respondents have given any promise/assurance of payment of salary and allowances equivalent to the Central Government/KVS employees, and that employees of BSF schools have, after fully accepting the terms and conditions of appointment order, joined their posts and they cannot now turn around and contend that the said conditions are not binding upon them.

10) It has further been submitted that the respondent school is being run as a welfare measure, as such, the tuition fee collected from school students cannot be hiked exorbitantly so as to increase the pay scales of the petitioners. It has been further submitted that BSF Education Fund Society is not in a position to give pay and allowances to its employees at par with the Central Government employees due to financial constraints. The respondents have given the details of the pay scales that are being paid to the employees of BSF schools, and it has been submitted that the respondent school releases increment at the rate of 3% per year in favour of its employees. Therefore,

there is no need of granting higher pay scales to the employees, as has been sought by petitioners.

11) It has been further submitted that the petitioners cannot claim parity with teachers of KV schools because the method of recruitment and the nature of functioning of teachers of KV Sangathan is entirely different from the teaching staff of BSF schools. It has been submitted that KV school teachers are recruited by a common recruitment examination followed by interviews, whereas BSF school teachers are selected only on the basis of interview. It has also been submitted that for appointment as a TGT in a KV school, a candidate must have passed Central Teachers Eligibility Test (CTET) conducted by NCTE, whereas no such condition of eligibility is mentioned for selection of TGTs in BSF schools. It has further been submitted that the objective of KV Sangathan, which runs the KV schools, is different from the objective of BSF Education Fund Society. According to the respondent school, BSF Education Fund Society has been set up to encourage and expand education among serving and retired/dead BSF members, whereas the KV Sangathan operates thousands of schools in the country for vast population of India. Therefore, there can be no comparison between the service conditions of teachers of KV Sangathan and teachers of BSF schools.

12) I have heard learned counsel for the parties and perused the material on record.

13) Before going to the merits of the case, it is necessary to deal with the preliminary objection raised by respondent No.7-school with regard to maintainability of the present writ petitions. In this regard, it would be pertinent to mention here that though both these writ petitions have been admitted to hearing, yet while admitting these writ petitions, this Court vide order dated 22.08.2026 has specifically recorded that issue of maintainability shall be decided at the final hearing stage. It is also pertinent to mention here that the petitioners have, while dealing with the objection with regard to maintainability of these writ petitions, placed heavy reliance upon judgment delivered in the case of **Santosh Kak** vs. **Union of India** (SWP No.1819/2014 decided on 10.07.2015), in which the issue of maintainability of writ petition against BSF school has been dealt with by a Coordinate Bench of this Court and it has been held that the writ petition is maintainable against BSF school. However, it appears that the said judgment came to be challenged before the Division Bench by the respondent school by way of a Letters Patent Appeal bearing LPASW No.76/2015. The said appeal came to be disposed of by the Division Bench on 18.11.2025, and while disposing of the

said LPA as having been rendered infructuous, it has been specifically recorded that the issue of maintainability of writ petition against BSF Senior Secondary School, Paloura, Jammu would remain open to be considered in some other appropriate case. In the face of these developments, it is necessary for this Court to go into this issue before proceeding to deal with the merits of the cases.

14) The contention raised by the respondent school is that it is not neither a State nor an instrumentality of the State within the meaning of Article 12 of the Constitution of India, as such, the present writ petitions are not maintainable. The petitioners claim that the respondent school is being administered by officers of BSF and that the Union of India through Ministry of Home Affairs and Ministry of Human Resources Development has deep and pervasive control over the respondent school. It is being further contended by the petitioners that the respondent school has been affiliated with CBSE under the category of 'Government-aided schools' and it receives grant-in-aid from the Government of India, therefore a writ petition is maintainable against it. It has also been contended that the petitioners, through the medium of present writ petitions are seeking implementation of statutory instructions imparted by CBSE. Therefore, even if the respondent school is not a State or its instrumentality,

still then writ petition against the said school is maintainable. According to the petitioners, imparting of education, for which the respondent school has been established, is a public duty and, as such, public law element is involved in the present case. Thus, according to the petitioners, the writ petitions are maintainable.

15) The respondent school, on the other hand, has contended that it has been established and it is being operated by BSF Education Fund Society, which is a society registered under Societies Registration Act. It has been submitted that the said society is not under administrative, financial or functional control of any authority including Government of India, and it receives no funds or grant-in-aid from Government of India or the UT Government. It has been claimed that merely because the respondent school has been affiliated with CBSE under the category of 'Government-aided schools' does not make it amenable to writ jurisdiction of this Court, particularly in a case where the petitioners are seeking enforcement of terms and conditions of their service, which falls within the realm of private law.

16) With a view to find an answer to the question as to whether writ petition against the respondent school, in the

facts and circumstances of the present case, is maintainable, it is necessary to have a survey of legal position in this regard.

17) Article 226 confers power on High Courts to issue writs for enforcement of fundamental rights as well as non-fundamental rights. As per this provision, High Court can issue various types of writs not only against statutory authorities and instrumentalities of the State but also against any other person or body performing public duty. So far as the respondent school is concerned, it is an admitted position that the same is being operated by BSF Education Society. The officers of BSF happen to be the ex-officio members of the said Society. This cannot be construed as pervasive control by BSF or Government of India on the society. The funds for operating the respondent school are being generated by the society from compulsory deductions from the salaries of employees of BSF and tuition and other fees received from the students. There is nothing on record to show that BSF Fund Society receives any regular grants/funds from Government of India or any other State Government. Therefore, it cannot be stated that the respondent school is under the financial control of Government of India or any other State Government. This aspect of the matter has already been dealt with by Madhya

Pradesh High Court in the case of **D.N. Sharma and others** vs. **Union of India and others** (Writ Petition No.1063/2015 decided on 30.10.2025) and it has been held that BSF schools are neither a State nor its instrumentality.

18) In view of the aforesaid discussion, it can safely be stated that the respondent school is neither the State nor an instrumentality of the State as defined under Article 12 of the Constitution. But still then, if it is found that the petitioners are seeking enforcement of a right flowing from a statute or that the subject matter of the writ petition involves a public law element, a writ petition would be maintainable because Article 226 of the Constitution vests power with the High Court to issue writs even against any other person or body. The legal position as regards the circumstances in which High Court would be within its power to issue writs against a person or body other than State and its instrumentality has been crystallized by the Supreme Court in its various judgments delivered from time to time. It would be apt to refer to some of these judgments to understand the legal position in this regard.

19) In **St. Mary's Education Society & anr**. vs. **Rajendra Prasad Bhargava & Ors.**, (2023) 4 SCC 498, the Supreme Court has, after considering the issue with regard to

maintainability of the writ petition in somewhat similar circumstances, summed up its conclusions as under:

> *"(a) 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 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.*
>
> *(b) 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.*
>
> *(c) 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.

(d) Even if it be perceived that imparting education by private unaided the 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 nonteaching 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 nonteaching staff is regulated by some statutory provisions, its violation by the employer in contravention of law may be interfered 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.

(e) 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) The aforesaid legal position has been reiterated by the Supreme Court in the case of **Army Welfare Education Society, New Delhi** vs. **Sunil Kumar Sharma & Ors.**, 2024 SCC OnLine SC 1683, and in a later judgment delivered in the case of **Dileep Kumar Pandey** vs. **Union of India & Ors.**, 2025 INSC 749.

21) From the foregoing analysis of law on the subject, it is clear that while an entity like respondent No.7 would be amenable to writ jurisdiction of the High Court under Article 226 of the Constitution, but judicial review of its actions by

the High Court would be limited to only those actions which have the element of public duty, whereas the actions which have the character of private law rights are not amenable to writ jurisdiction of the High Court. It is also clear that if enforcement of a statutory right is being sought by a writ petitioner against an entity like respondent No.7, still then the writ petition would be maintainable.

22) Turning to the facts of the present case, the petitioners are seeking release of pay in their favour on the same pattern as is being paid to employees of the Central Government/ State Government and teachers of KV Sangathan. This is purely a private matter between the petitioners and respondent No.7-school. Even if it is assumed that respondent No. 7-school is imparting public duty while giving education to the children, still then the act complained of has to have direct nexus with the discharge of said public duty. Individual wrong or breach of mutual contract, without having any public element as its integral part, cannot be rectified through a writ petition under Article 226 of the Constitution. In the instant case, the petitioners have raised grievance with regard to their service conditions. The said grievance falls within the ambit of private law having no nexus with the discharge of public duty of

imparting education. Thus, a writ petition to redress such grievance is not maintainable against the respondent school.

23) However, if it is shown that the service conditions of the petitioners are governed by statutory provisions, this Court would be justified in exercising its writ jurisdiction to enforce those rights. In the instant case, the petitioners are seeking enforcement of instructions, guidelines issued by CBSE under its bye-laws, which do not have force of statutory flavour. Even otherwise, CBSE is a society and is not a statutory authority. Therefore, its bye-laws do not have any statutory force.

24) In fact, in **St. Mary Education Society's** case (supra), this aspect of the matter has been dealt with by the Supreme Court. While rejecting the contention that a writ petition is maintainable against the management if it violates rules and bye-laws laid down by the CBSE, it was held that CBSE itself is not a statutory body, nor the regulations framed by it has any statutory force. The Supreme Court further held that 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. In the same judgment, the Supreme Court has held that where a teacher or non-

teaching staff challenges action of Committee of Management that it has violated the terms of contract or the rules of affiliation bye-laws, the appropriate remedy for such teacher or employee is to approach the CBSE or take such other legal remedy as may be available under law. It has been observed that it is open to the CBSE to take appropriate action against the Committee of Management of the institution for withdrawal of recognition in case it finds that Committee of Management has not performed its duties in accordance with the affiliation bye-laws. The Supreme Court also held that even though imparting education is a public function, but a service dispute basically arises from a service contract and, as such, does not have any public law element.

25) In the face of aforesaid authoritative pronouncement of the Supreme Court on the issue which is involved in the present case, there is no scope for this Court to take any other view of the matter. In fact, Madhya Pradesh High Court in **D. N. Sharma and others** case (supra) has already taken a view that writ petition is not maintainable against BSF school in a case involving service dispute. A similar view has been taken by Rajasthan High Court in the case of **Omprakaash Chhabra** vs. **Director General, BSF and others** (Civil Writ Petition No.714 of 2006 decided on 09.07.2025).

26) For what has been discussed hereinbefore, both the writ petitions are held to be not maintainable and are accordingly dismissed, leaving it open to the petitioners to work out appropriate remedy.

(Sanjay Dhar)
Judge

SRINAGAR
19.11.2026
"Bhat Altaf-Secretary"

Whether the **Judgement** is speaking: **YES**
Whether the **Judgement** is reportable: **YES**

HIGH COURT
JAMMU & KASHMIR AND LADAKH