

In the High Court of Madhya Pradesh
At Indore

BEFORE
HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 28TH OF OCTOBER, 2022

Writ Petition No.11165/2021

Between: -

Vinita Nair W/o Pradeep Nair,
Age- 45 years, Occupation- Teacher,
R/o- 605, Simran Residency, Kanadia Road,
Bengali Square, Indore, District Indore (MP)

Renu Singh W/o M.K. Singh,
Age- 53 years, Occupation- Teacher,
R/o- A1-503, Karol Bagh, Bhawrasla,
Indore, District Indore (MP)

Monica Khandelwal W/o Prakash Khandelwal,
Age- 49 years, Occupation- Teacher,
R/o- 153, Alok Nagar, Kanadia Road,
Indore, District Indore (MP)

Neelu Anand W/o Abhijeet Singh Anand,
Age- 51 years, Occupation- Teacher,
R/o- B-189, MIG Duplex, Behind CHL Hospital,
Indore, District Indore (MP)

Rinita Jain W/o Tapan Jain,
Age- 47 years, Occupation- Teacher,
R/o- EH-58, Scheme No.54, Vijay Nagar,
Indore, District Indore (MP)

Vrushali Nimgaonkar W/o Rishikesh Nimgaonkar,
Age- 43 years, Occupation- Teacher,
R/o- 203, Elite Tower, Park Road,
Indore, District Indore (MP)

Sudha Jha W/o Rajesh Jha,
Age- 51 years, Occupation- Teacher,
R/o- RH-4, Classic Purnima Estate,
Khajarana Ring Road, Indore, District Indore (MP)

Jaison Joys S/o Joys John,
Age- 30 years, Occupation- Teacher,
R/o- 202, Navya Avenue Apartment,

13, Paricharika Nagar, Indore, District Indore (MP)

Ashima Shastri Modi W/o Gourav Modi,
Age- 33 years, Occupation- Teacher,
R/o- 188/C, Kalani Bagh, Dewas, District Indore (MP)

Navin Lodwal S/o Arjun Lodwal,
Age- 39 years, Occupation- Teacher,
R/o- 19-B, Dr. Abedkar Nagar,
Indore, District Indore (MP)

Sonali Pandit W/o Late Shri Atul Pandit,
Age- 49 years, Occupation- Teacher,
R/o- 251, MR-4, Mahalakshmi Nagar,
Indore, District Indore (MP)

Shashi Dadhich W/o Bijendra Dadhich,
Age- 49 years, Occupation- Teacher,
R/o- 67, Vyankatesh Nagar,
Indore, District Indore (MP)

Nisha Sharma W/o Late Shri Sanjay Sharma,
Age- 52 years, Occupation- Teacher,
R/o- H-9, MIG Colony,
Indore, District Indore (MP)

Archana Mundra D/o Ram Prasad Ji Jotla,
Age- 51 years, Occupation- Teacher,
R/o- 29/1, Race Course Road,
Dr. R.S. Bhandari Marg, Indore, District Indore (MP)

Rohit Biwal S/o Ramesh Biwal,
Age- 34 years, Occupation- Teacher,
R/o- 35-A/4, Mayur Nagar,
Indore, District Indore (MP)

Rajveer Singh Rathore S/o Madan Singh Rathore,
Age- 27 years, Occupation- Teacher,
R/o- 110-A, Swasthya Nagar,
Indore, District Indore (MP)

.....PETITIONERS

(By Shri Rishi Shrivastava, Advocate)

AND

Union of India Through Secretary,
Department of School Education & Literacy,
Ministry of Education,
124-C, Shastri Bhawan, New Delhi – 110 001

The Principal Secretary,
School Education Department,
Vallabh Bhawan, Bhopal (MP)

The Collector / District Magistrate,

Indore, District Indore (MP)

**Council for the Indian School Certificate Examination
Through Secretary,**
Pragati House, 3rd Floor, 47-48, Nehru Palace,
New Delhi – 110 019

Laurels School International,
Through Executive Director,
Talavali Chanda, Mangalia (P.O.),
AB Road, Indore, District Indore (MP)

(Union of India by Shri Himanshu Joshi, Assistant Solicitor General;
State of Madhya Pradesh by Shri Nitin Singh Bhati, Government Advocate;
and
Laurels School International by Shri Gaurav Chhabra, Advocate along with
Shri Prabal Jain, advocate)

.....RESPONDENTS

This **PETITION** coming on for orders this day, the court
passed the following:

ORDER

Heard on an application (**Document No.3412/2022**) for
dismissal of the petition on account of its maintainability as the
preliminary objections have been raised on behalf of respondent
No.5 (Laurels School International).

2. Shri Gaurav Chhabra, learned counsel for respondent No.5 /
School has submitted that respondent No.5 is an unaided
educational institution and the petitioners were employed in the
aforesaid School on contractual basis only as teachers.

3. It is submitted that the petitioners have claimed the reliefs
pertaining to the payment of salary by respondent No.5 / School,
which does not involve any sort of public functions on the part of
respondent No.5. Hence, the petition is not maintainable qua

respondent No.5.

4. In support of his contentions, Shri Chhabra has relied upon a recent decision rendered by the Supreme Court in the case of **St. Mary's Education Society & another v. Rajendra Prasad Bhargava & others**, Civil Appeal No.5789/2022, dated 24.08.2022, reported in 2022 SSC On-Line SC 1091.

5. It is submitted that the relationship between the petitioners and respondent No.5 was contractual in nature and as per the contract, respondent No.5 had all the authorities to terminate the services of the petitioners and as per the decision rendered by the Supreme Court in the case of **St. Mary's Education Society** (supra), a private unaided educational institution can be made amenable to writ jurisdiction under Article 226 of the Constitution of India only when the action or inaction of such institution which is under challenge relates to public functions performed by such institution.

6. The aforesaid application has been opposed by the learned counsel for the petitioners and it is submitted that the application is misconceived as respondent No.5 is a school and even if it is an unaided school, it is very much imparting education which is a public function; and since the petitioners are the teachers, it cannot be said that respondent No.5 is not amenable to writ jurisdiction.

7. In support of his submissions, Shri Rishi Shrivastava, learned counsel for the petitioners has relied upon an earlier decision rendered by the Supreme Court in the case of **Marwari Balika**

Vidyalaya v. Asha Srivastava & others reported as **(2020) 14 Supreme Court Cases 449.**

8. Heard finally, with the consent of the learned counsel for the parties.

9. This petition has been filed by the petitioners under Article 226 of the Constitution of India seeking the following relief: -

"7. RELIEF SOUGHT: -

It is therefore most respectfully prayed before this Hon'ble Court that appropriate writ, order or direction may kindly be issued that,

1. Retrospective termination of the Petitioners be held illegal and be set aside,
2. Respondent No.5 be directed to make payment of full salary to the Petitioners till date, including the payment of back wages along with interest of 12% p.a. thereon,
3. Respondent No.3 be directed to initiate inquiry against Respondent No.5 for the illegalities committed by Respondent No.5,
4. Respondent No.4 be directed to cancel the affiliation of Respondent No.5,

Any other relief which this Hon'ble Court deems fit in the facts and circumstances of this case may kindly be passed in the interest of justice."

10. The grievance of the petitioners, who are teachers, is that they are aggrieved by the deduction of their salary by respondent No.5 (Laurels School International) which is admittedly a private party.

11. The short point involved in the interlocutory application is in respect of maintainability of the petition on the ground that whether

the respondent No.5, an unaided educational institution would be amenable to writ jurisdiction when its relationship with the petitioners was contractual in nature.

12. So far as the decision rendered by the Supreme Court in the case of **St. Mary's Education Society** (supra) is concerned, relevant paragraphs 3, 10, 11, 12, 12, 13, 14, 68, 69 and 70 of the same read, as under: -

"3. In the present appeal, two pivotal issues fall for consideration of this Court:—

- (a) Whether a writ petition under Article 226 of the Constitution of India is maintainable against a private unaided minority institution?
- (b) Whether a service dispute in the private realm involving a private educational institution and its employee can be adjudicated in a writ petition filed under Article 226 of the Constitution? In other words, even if a body performing public duty is amenable to writ jurisdiction, are all its decisions subject to judicial review or only those decisions which have public element therein can be judicially reviewed under the writ jurisdiction?

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10. The appellants herein raised a preliminary objection before the learned single Judge of the High Court on the maintainability of the writ petition filed by an employee of a private unaided minority institution.

11. The learned single Judge of the High Court upheld the preliminary objection raised by the appellants herein and rejected the writ application as not being maintainable. While rejecting the writ application vide order dated 10.07.2017 on the ground of not being maintainable in law, the learned single Judge held as under:—

“So far as the judgment in the matter of K. Krishnamacharyulu (supra) relied upon by the petitioner is concerned, in that case in respect of teachers duly appointed to a post in the private institution, it has been held by the Supreme Court that

when an element of public interest is created and institution is catering to that element, the teacher, the arm of the institution is also entitled to avail of remedy provided under Article 226. In the present case, petitioner is not a teacher but is a member of clerical staff being L.D.C., hence he is not entitled to the benefit of that judgment.

So far as the judgment in the matter of Frank Anthony Public School Employees Association (supra) is concerned, that was a case where the teachers had approached the court for writ of mandamus seeking equalisation of their pay scales and condition of service with those of their counterparts in government schools and in that context it was observed that ‘the management of a minority Educational institution cannot be permitted under the guise of the fundamental right guaranteed by Article 30 (1) of the Constitution, to oppress or exploit its employees any more than any other private employee, therefore the said judgment is distinguishable on its own facts.

Similarly the benefit of Single Bench judgment of this court in the matter of Mrs. Kirti Bugde (supra) cannot be granted to the petitioner because in that judgment the petitioner was a teacher and a member of the academic staff but that is not so in the present case.

Having regard to the aforesaid, I am of the opinion that writ petition filed by the petitioner for issuance of writ of certiorari against the action of respondent No. 3 which is a private unaided institution is not maintainable under Article 226 of the Constitution of India, which is accordingly dismissed, however with a liberty to the petitioner to avail such other remedies as are available in the law.”

12. Being aggrieved with the aforesaid judgment and order passed by the learned single Judge of the High Court, the respondent No. 1 herein went in appeal under Section 2(1) of the M.P. Uchcha Nyayalaya (Khand Nyayapeeth Ko Appeal) Adhinyam, 2005. The Division Bench of the High Court thought fit to set aside the judgment and order passed by the learned single Judge and allowed the appeal holding that the writ application filed by the respondent No. 1 herein against the appellants herein challenging the order of termination from service was maintainable under Article 226 of the Constitution. The appeal Court remitted the matter to the learned single Judge for being considered on its own merits. The Division Bench, while allowing the appeal filed by the respondent No. 1 herein, held as under:—

“11. Since all the aforesaid previous judgments have been considered, the judgment of Marwari (supra) is a binding pre-

cedent. The present appellant was terminated from a private institution. In *Marwari* (supra) and *Ramesh Ahluwalia* (supra) also the termination of Teacher/Officer was called in question in a writ petition. As per this judgment, the writ petition is maintainable. A division bench of this Court in *Yogendra Singh Dhakad v. Delhi Public School Society* 2014 SCC On-Line MP 162 has also taken the same view. So far as the judgment of Supreme Court in *Executive Committee of Vaish Degree College, Shamli v. Lakshmi Narain* (1976) 2 SCC 58 is concerned, it is not applicable to the present case as it did not arise out of a writ petition.

12. Considering the aforesaid, order of learned Single Judge dated 10.07.2017 passed in WP No. 1052/2017 is set aside. The writ petition is restored to its original number. We have no doubt that writ court shall make every endeavor to decide the petition expeditiously preferably within two months.

13. The writ appeal is allowed to the extent indicated above.”

13. It appears from the aforesaid that the appeal court heavily relied upon the decision of this Court rendered in the case of *Marwari Balika Vidhyalaya v. Asha Shrivastaga*, reported in (2020) 14 SCC 449, which, in turn, has relied upon its decision in the case of *Ramesh Ahluwalia v. State of Punjab*, reported in (2012) 12 SCC 331.

14. In view of the aforesaid, the appellants are before this Court with the present appeal.

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68. We may sum up our final 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 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 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 oth-

erwise 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.

69. In view of the aforesaid discussion, we hold that the learned single Judge of the High Court was justified in taking the view that the original writ application filed by the respondent No. 1 herein under Article 226 of the Constitution is not maintainable. The Appeal Court could be said to have committed an error in taking a contrary view.

70. In view of the aforesaid, this appeal succeeds and is hereby allowed. The impugned judgment and order passed by the Division Bench of the High Court in the Writ Appeal No. 485 of 2017 is set aside. The writ application accordingly stands rejected on the ground of its maintainability. It is needless to clarify that it shall be open to the respondent No. 1 herein to take up the issue with the CBSE itself or the State or may avail any other legal remedy available to him in accordance with law. We clarify that we have otherwise not expressed any opinion on the merits of the case."

(Emphasis supplied)

13. A bare perusal of the decision rendered by the Supreme Court in the case of *St. Mary's Educational Society (supra)*, it is clear as noon day that a distinction has been made between the employees of an unaided educational institution, viz., the ones who are directly involved in the main object of the institution i.e., to impart the education and then there are others, other than the teachers, whose role is secondary to the main purpose of the institution. And, a teacher, undoubtedly is an employee, who imparts education on behalf of the unaided educational institution, has a direct nexus to the main purpose of the educational institution.

In such circumstances, the application (**Document No.3412/2022**) being devoid of merits and frivolous, is hereby **dismissed**.

Let the reply be filed in 4 weeks time and pleadings be completed / filed within further 2 weeks time.

List on **11.01.2023**.

(Subodh Abhyankar)
Judge

Pithawe RC

