St. Marys Education Society vs Rajendra Prasad Bhargava on 24 August, 2022

Bench: D.Y. Chandrachud, A.S. Bopanna

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5789 OF 2022
(Arising out of S.L.P. (Civil) No. 1118 of 2022)

ST. MARY'S EDUCATION SOCIETY & ANR. ……APPELLANTS

VERSUS

RAJENDRA PRASAD BHARGAVA & ORS. ……RESPONDENTS

JUDGMENT

J.B. PARDIWALA, J. :

1. Leave granted.

2. This appeal is at the instance of a private unaided minority educational institution and its disciplinary committee, (respondents before the High Court) and is directed against the judgment and order dated 15.12.2021 passed by a Division Bench of the High Court of Madhya Pradesh, Bench Indore in the Writ Appeal No. 485 of 2017 by which the Division Bench set aside the judgment and order passed by a learned single Judge of the High Court and held that a writ petition filed by an employee of a private unaided minority educational institution seeking to challenge his termination from service is maintainable in law.

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?

4. The aforesaid two questions, though not vexed, nevertheless despite plethora of case laws, always give rise to a debate.

FACTUAL MATRIX

5. The appellant No. 1 Society runs a private unaided educational institution. The appellant No. 2 is the disciplinary committee constituted by the appellant No. 1 Society for the purpose of its internal management. The respondent No. 1 herein (original writ applicant before the learned single Judge) was serving as an office employee of the appellant No. 1. It appears from the materials on record that a show cause notice cum suspension order dated 08.09.2014 was issued by the appellant No. 1 herein to the respondent No.1 for the various alleged misconduct in service. The respondent No. 1 herein was thereafter issued a departmental chargesheet dated 08.12.2014 essentially on six grounds.

6. The statement of charges and allegations as contained in the chargesheet dated 08.12.2014 are as under: "Charge I That, you refused to receive and deposit the PTA fund from the lady teachers of the school on 4 th August, 2014 and misbehaved with them. You talked to them rudely, loudly and your language was improper. Your refusal to receive and deposit the amount during the working hours is a gross misconduct and dereliction of your duty and act subversive of discipline.

Charge II That, you are in habit of writing unwarranted letters to different authorities against the Principal of the school using very disrespectful, derogatory and offensive language, making false accusation which is spoiling the image and reputation of this school.

Charge III That, you have threatened and pressurized the institution by closing your Bank Account in which your monthly salary was being deposited for the last so many years. You also actually refused to accept and receive your monthly salary for the month of August, 2014, which was offered to you by cheque personally on 01.09.2014. In the following month the salary from 1 st to 8th September and 9th to 30th September as Subsistence Allowance was also offered to you by cheque on 01.10.2014 which you refused to accept again, saying that "I will take the subsistence allowance but until and unless I get justice ..." (Letter dated 10.10.2014).

Your refusal to accept the salary shows that you do not wish to continue the relationship of employer – employee with the school because the school cannot take your service without paying your salary. Charge IV That earlier also your rude behavior with the Principal of the school was noticed for which you were warned and advised to improve your behavior and talk politely.

However, no improvement has been shown by you in your behavior. You have misbehaved with the two earlier Principals also namely: (1) Sr. Lalita (Letter dated 17.04.2009) and (2) Sr. Flavia.

Charge□V□That, you were threatening the institution by writing to the President of our country that if something happens to you physically or mentally on work due to such behavior at home the sole responsibility of it would be on the School Management, the Principal and the various authorities. This behaviour has compelled the school to complain to the police regarding your threat. Charge□ VI□That, you are in the habit of taking leaves at will and insisting on taking leave at your sole convenience, sometimes without any sanction also." After conclusion of the departmental enquiry, the services of the respondent No. 1 came to be terminated vide order dated 08.05.2015.

7. The respondent No. 1 herein challenged the order of termination on various grounds in appeal before the Disciplinary Committee of the appellant No. 1. The appeal was filed by the respondent No. 1 herein under Rule 49 of the CBSE Affiliation Byelaws. The Disciplinary Committee consisted of (i) Sr. M. Deepa, Chairman, (ii) Sr. M. Georgina, School Manager,

(iii) S.N. Purwar, Advisor CBSE Nominee, and (iv) Sadhna Paranjape, School Managing Committee Member. The appeal was ordered to be dismissed by the Disciplinary Committee, the appellant No. 2 herein, vide order dated 23.09.2016.

8. In view of the aforesaid, the respondent No. 1 invoked the writ jurisdiction of the High Court under Article 226 of the Constitution of India. In the writ petition, the respondent No. 1 arrayed the following five respondents:□

1. Union of India

2. Central Board of Secondary Education

3. St. Mary's Education Society

4. Disciplinary Committee of the School

5. Mr. T.R. Lapalikar (retired Deputy Labour Commissioner appointed as Enquiry Officer)

9. It is pertinent to note that despite the above five respondents being arrayed as aforestated, the principal relief sought in the writ petition filed by the respondent No. 1 herein was to set aside the order dated 23.09.2016 passed by the Disciplinary Committee of the school and to set aside the order of termination dated 08.05.2015 passed by the appellant No. 1 herein. In other words, the respondent No.1 herein sought writ in the nature of certiorari to be issued against the private unaided minority institution. It may not be out of place to state at this stage that no relief was sought against the Union of India, respondent No. 2 herein and the Central Board of Secondary Education (CBSE), respondent No. 3 herein.

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) Adhiniyam, 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 precedent. 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 Vs. Delhi Public School Society & Ors. 2014 SCC OnLine MP 162 has also taken the same view. So far as the judgment of Supreme Court in Executive Committee of Vaish Degree College, Shamli & Ors. Vs. Lakshmi Narain & Ors. (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.

LEGAL STATUS OF THE APPELLANT NO. 1 – SOCIETY

15. The appellant No. 1 is a Society registered under the Madhya Pradesh Society Registrikaran Adhiniyam, 1973. The Society runs an all-girls school in Mhow, Indore, Madhya Pradesh, by the name St. Mary's Higher Secondary School, which was founded by a group of French Catholic Nuns in 1893. The school is a private unaided minority educational institution, which enjoys the protection guaranteed under Article 30(1) of the Constitution. There is absolutely no Governmental control over the functioning and administration of the school. The respondent No. 1 herein was employed in this school prior to his termination. The school is presently affiliated to the Central Board of Secondary Education (CBSE) and is thus governed by its Rules and Byelaws. Further, the Society has its own Byelaws, namely, (1) the Service Conditions for the Employees of St. Mary's School and (2) Service Rules for Teaching and Non-Teaching Staff. The appellant No. 1-Society and the school are absolutely private institutions, without any aid or control of the Government or any instrumentality of the Government, and therefore, not a "State" within the meaning of Article 12 of the Constitution.

16. CBSE- AFFILIATION BYELAWS Chapter-I

1. Short Title and Definitions:

> 1. These Byelaws shall be called Central Board of Secondary Education – International Affiliation Byelaws.
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> 2. They are effective from April, 1, 2010 with modifications / amendments from time to time.
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> 3. In case of any dispute(s) regarding the withdrawal of not granting affiliation or any other matter pertaining to upgradation and /or any matter arising in respect of anything pertaining to affiliation with any school and / or any other person, society, company or organization , the courts and tribunals at Delhi only shall have the

exclusive jurisdiction to entertain such disputes.

2. Definitions:

(i) “Affiliation” means formal enrolment of a school among the list of approved schools of the Board following prescribed / approved courses of studies up to class VIII as well as those preparing students according to prescribed courses for the Board’s International Curriculum examinations.

x x x x (xxxxii) “School” means any recognized school imparting elementary / middle / secondary /senior secondary level education and includes:

(i) a school established, owned or controlled by the appropriate Government or a local authority;

(ii) an aided school receiving aid or grants to meet whole or part of its expenses from the appropriate Government or the local authority;

(iii) a school belonging to specified category; and

(iv) an unaided school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority.

Chapter□6

23. Powers and functions of the School Managing Committee:

(xi) It shall exercise powers to take disciplinary action against staff.

25. Head of the School – Duties, Powers and Responsibilities:

(xii) Supervise, guide and control the work of the teaching and non□teaching staff of the school.

Chapter □7 Service Rules for Employees:

26. Short Title:

(1) Each school affiliated/ to be affiliated with the Board shall frame Service Rules for its employees which will be as per Education Act of the State/ Union Territory, if the Act makes adoption of the same obligatory, otherwise as per Service Rules given in subsequent sections. (2) Service Contract will be entered with each employee as per the provision in the Education Act of the State / Union Territory or as given in Appendix III, if not obligatory as per the State Education Act / Act applicable in the

country in which the school is situated.

27. Appointments:

(1) All appointments to all categories of employees except Group 'D' employees (multitasking staff/ housekeeping) as per relevant country /Government of India gradation shall be made by Managing Committee either by direct recruitment or by promotion through a Selection Committee constituted by the School Society / Trust / Company Registered under Section 25 of the Companies Act, 1956 or under the appropriate Acts of relevant country and in accordance with and upon such conditions as the Managing committee may decide, which shall be consistent with norms of the Board / Government if statutory provision exists. Appointment of Group 'D' employees will be made by the Principal through constituted Selection Committee.

(2) The Selection Committee shall include

a) In the case of recruitment of the Head of the School:

(i) the President of the Society;

(ii) the Chairman of the Managing Committee;

(iii) an educationist, nominated by the managing committee;

(iv) a person having experience of administration of schools, nominated by the Managing Committee; and

(v) an academic officer or representative of the Board.

b) In the case of recruitment of teachers and librarian:

(i) the Chairman of the managing committee;

(ii) Head of the School;

(iii) an educationist, nominated by the managing committee; and

(iv) a subject expert

c) In the case of recruitment of clerical staff / Laboratory Assistant:

(i) The Chairman of the managing committee or any member of the managing committee nominated by the Chairman.

(ii) Head of the school;

(iii) Manager/ Correspondent of the School

d) In case of recruitment of class IV staff / multitasking staff/ housekeeping staff:

(i) Head of the school;

(ii) A nominee of School Managing Committee. (3) The Selection Committee shall regulate its own procedure and in the case of any difference of opinion amongst the members of the Selection Committee on any matter, it shall be decided by the trust / society running the school or Board.

(4) The appointment letters of every employee of a school shall be issued by its managing committee. (5) Where any selection made by the Selection Committee is not acceptable to the managing committee of the school, the managing committee shall record its reason for such nonacceptance and refer the matter to Board and the trust or society or Company registered under Section 25 of the Companies Act, 1956 or under the appropriate Acts of relevant country running the school and the trust or society, as the case may be, shall decide the same. (6) Employees shall be appointed subject to the provisions of this agreement and they shall have to comply with all the requirements of the provisions contained herein.

44. Code of Conduct:

Byelaw number 44 of the Chapter□7 prescribes that every employee shall be covered by the code of conduct. It prescribes the acts that constitute breach of code of conduct, the acts which shall not be deemed as a breach is a code of conduct.

46. Disciplinary Procedure:

Suspension

1. The School Managing Committee may place an employee under suspension where:

a. The disciplinary proceedings against her are contemplated or pending.

Or b. A case against her in respect of any criminal offence is under investigation or trial;

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                              Or
c.    She is charged with embezzlement;
                              Or
d.    She is charged with cruelty / physical punishment or
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mental harassment towards any student or any employee of the school.

Or e. She is charged with misbehavior towards any parent, guardian student or employee of the school;

Or f. She is charged with a breach of any other Code of Conduct.

49. Procedure for Imposing Major Penalty:

1. No order imposing on any employee any major penalty shall be made except after an inquiry is held as far as may be, in the manner specified below:

a) The disciplinary authority shall frame definite charges on the basis of the allegation on which the inquiry is proposed to be held and a copy of the charges together with the statement of the allegations on which they are based shall be furnished to employee and she shall be required to submit within such time as may be specified by the disciplinary authority but not later than two weeks, a written statement of her defence and also to state whether she desires to be heard in person;

b) On receipt of the written statement of defence, or where no such statement is received within the specified time, the disciplinary authority may itself make inquiry in to such of the charges as are not admitted or if it considers it necessary to do so, appoint and inquiry officer for the purpose;

c) At the conclusion of the enquiry the enquiry officer shall prepare a report of the enquiry recording her findings on each of the charges together with the reasons thereof;

d) The disciplinary authority shall consider the report of the enquiry and record its findings on each charge and if the disciplinary authority is of opinion that any of the major penalties should be imposed it shall:

(i) furnish to the employee a copy of the report of the enquiry officer, where an enquiry has been made by such officers;

(ii) give her notice in writing stating the action proposed to be taken in regard to her and calling upon her to submit within the specified time, not exceeding two weeks, such representation as she may wish to make against the proposed action;

(iii) on receipt of the representation if any, made by the employee, the disciplinary authority shall determine what penalty, if any should be imposed on the employee and communicate its tentative decision to impose the penalty to the Committee for its prior approval;

(iv) after considering the representation, made by the employee against the penalty, the disciplinary authority shall record its findings as to the penalty, which it proposes to impose on the employee and send its findings and decision to the Committee for its approval and while doing so the disciplinary authority shall furnish to the employee all relevant records of the case including the statement of allegations, charges framed against the employee, representation made by the employee, a copy of the enquiry report, where such enquiry was made and the proceedings of the disciplinary authority.

2. No order with regard to the imposition of a major penalty shall be made by the disciplinary authority except after the receipt of the approval of the Committee.

51. Disciplinary Committee:

1. In case the employee wishes to appeal against the order of the Disciplinary authority, the appeal shall be referred to a Disciplinary Committee. The Disciplinary Committee shall consist of the following:

a) The Chairman of the School Managing committee or in her absence any member of the Committee, nominated by her.

b) The Manager of the School, and where the disciplinary proceeding is against her any other person of the Committee nominated by the Chairman.

c) A nominee of the Board appropriate authority, She shall act as an adviser.

d) The Head of the School, except where the disciplinary proceedings is against her, the Head of any other school nominated by the CBSE or Director of Education in case the Act so provides.

e) One teacher who is a member of School Managing Committee of the school nominated by the Chairman of the Committee.

2. The Disciplinary Committee shall carefully examine the findings of the enquiry officer reasons for imposing penalty recorded by the Disciplinary Authority and the representation by the employee and pass orders as it may deem fit.

Appendix–IV attached to the Byelaws is with respect to the minority educational institutions. Clause 6 of Appendix□IV reads thus:□"6. Disciplinary Control over Staff in Minority Educational Institutions: While the managements should exercise the disciplinary control over staff, it must be ensured that they hold an inquiry and follow a fair procedure before punishment is given. With a view to preventing the possible misuse of power by the management of the Minority Educational Institutions, the State has the regulatory power to safeguard the interests of their employees and their service conditions including procedure for punishment to be imposed." (Emphasis supplied)

SUBMISSIONS ON BEHALF OT THE APPELLANTS

17. Mr. Pai Amit, the learned counsel appearing for the appellants, vehemently submitted that the Division Bench of the High Court committed a serious error in passing the impugned judgment and order. He would submit that the learned single Judge of the High Court rightly took the view that the writ petition filed by the respondent No.1 herein seeking to challenge the order of termination passed by the appellant No. 1 herein could not be said to be maintainable in law. He would submit that the Division Bench of the High Court in an intra-court appeal ought not to have taken the view that the writ petition under Article 226 of the Constitution at the instance of the respondent No. 1 herein was maintainable before the learned single Judge.

18. Mr. Pai would submit that the Division Bench of the High Court mis-directed itself by relying upon the two decisions of this Court rendered in the cases of Ramesh Ahluwalia (supra) and Marwari Balika Vidhyalaya (supra).

19. Mr. Pai laid much stress on the following three aspects of the matter:-

(a) Indisputably, the appellant No. 1 is a private unaided minority educational institution;

(b) The dispute between the appellants and the respondent No. 1 herein is purely contractual in nature and does not involve any public law element, and

(c) The respondent No.1 herein has sought relief only against the two orders of termination and both of which have been passed by the appellant No. 1 in its capacity as a private body.

20. In such circumstance referred to above, Mr. Pai prays that there being merit in his appeal, the same may be allowed and the impugned order passed by the Division Bench of the High Court may be set aside.

21. The respondent No. 1 herein appeared virtually in-person. He relied upon the written submissions furnished by him to this Court. In his written submissions dated 10.08.2022, he has mainly stated as under:-"That the respondent no. 1 (Rajendra Prasad Bhargava) is filing this Written Notes as per this Hon'ble Court's Order Dated:08.08.2022 seeking that the judgment and final order dated: 15.12.2021 of the Hon'ble High Court of Madhya Pradesh, Bench at Indore in Writ Appeal No. 485/2017 kindly be upheld whereby the writ petition of Respondent No. 1 was maintainable.

That the Respondent No. 1 was working in St. Mary's Hr. Sec. School, Mhow (M.P.) run by the appellant namely St. Mary's Education Society, serving as a LDC since July 1, 1987. That, the respondent no. 1 has performed his duty honestly, diligently, allegiance (loyalty) and with hard work during his 27 years of service and there is no adverse remark in his Service Book and Annual Confidential Roll. That, as far as the respondent no. 1 has knowledge and information, on the basis of that the respondent no. 1 humbly prays to this Court that:

I) Mandamus is a very wide remedy which must be available to reach injustice wherever it is found.

Technicalities should not come in the way of granting that relief under Article 226.

"A word is said to be mandatory as well as defining in nature when the word MUST is used in meaning of that word." As the word "MUST" is used in the aforesaid statement about the mandamus by this Hon'ble Court, the mandamus becomes mandatory as well as defining in nature. Hence it is proved that mandamus is a very wide remedy which must be easily available to reach injustice wherever it is found. Technicalities should not come in the way of granting that relief under Article 226. I (Respondent No. 1), therefore, humbly pray to this Hon'ble Supreme Court that kindly reject the contention urged by the appellant on the maintainability of the writ petition and to kindly upheld the Impugned judgment and final order dated: 15.12.2021 rightly and legally held by the Hon'ble High Court of Madhya Pradesh, Bench at Indore in Writ Appeal No. 485 of 2017.

1. Kindly read page No. 2 and 3 of Reply to the SLP.

OR Kindly read page No. 76 and 77 of Reply to the SLP (Annexure R□2 Ramesh Ahluwalia case reported in (2012) 12 SCC 331).

2. Kindly read Para 20 on page No. 89, Para 21 on page No. 89□90 and Para 22 on page No. 90 of Reply to the SLP (Annexure R□3 Andi Mukta case reported in 1989 AIR 1607) (1989) 2 SCC 691

3. Kindly read page No. 6 and 7 of Reply to the SLP.

OR Kindly read Para 15 on page No. 97, 98 and 99 of Reply to the SLP (Annexure R□4 Marwari Balika Vidhyalya Case reported in (2020) 14 SCC 449.

4. Kindly read page No. 49 of SLP (Annexure P□5 Yogendra Singh Dhakad versus Delhi Public School Society, 2014 SCC Online MP 162: AIR 2014 (NOC

580) 211."

22. In his written submissions, the respondent No. 1 has also requested this Court to consider the following social circumstances:□"i) That, my youngest son Ashwin Bhargava is suffering from Cancer of Nasopharanx (Rare type of Head and Nose Cancer) and I'm facing severe financial difficulties in his medical treatment.

ii) That, my wife Smt. Sunita Bhargava, 53 years has been operated upon for Carnio Vertebral Junction Anamoly on 25.12.2021. She has been discharged on 02.01.2022 and still completely on bed. Her medication is still going on through physiotherapy and regular follow up for future periodic evaluation. For her operation I've taken a loan of Rupees 350000/□from a friend which has put more financial burden on me. I've to attend her throughout the day and night as well.

iii) That, apart from this, I'm suffering from Cataract Disease in left eye.

iv) That, I'm also suffering from Knee Pain problem in the right leg."

23. He has prayed for the following reliefs:- "Humble Prayer to this Court in the interest of Justice:

> 1. That, I (Respondent No. 1), therefore, humbly pray to this Court that kindly reject the contention urged by the appellant on the maintainability of the writ petition and to kindly upheld the Impugned Judgment and final order dated:15.12.2021 rightly and legally held by the High Court of Madhya Pradesh, Bench at Indore in Writ Appeal No. 485 of 2017.
>
> 2. That, the impugned order dated 23.09.2016 passed by the appellant, being illegal, improper and inoperative, may kindly be set aside;
>
> 3. That, the termination order dated 08.05.2015 passed by the disciplinary authority may kindly be set aside;
>
> 4. That, necessary orders may kindly be passed for reinstating the Respondent no. 1 at his original post with all consequential benefits and back wages;
>
> 5. Any other relief, which this Court may consider necessary in the interest of justice, may also be granted in favor of the Respondent no. 1."

24. Later in point of time, the respondent No. 1 filed additional written submissions dated 11.08.2022, wherein the following has been stated:- "1. That, when Respondent no. 1 was appointed in the said institution (St. Mary's Hr. Sec. School), the said institution was affiliated to the M.P. Board (State Board). At that time the school was also in receipt of the Grant-in-Aid from the State Government of M.P.

2. That, whilst the respondent no. 1 was appointed on 01.07.1987 but the Service Conditions and Guidelines for the Teachers was for the first time given on 26.07.2013 by the school to the respondent no. 1.

3. That, at the time of appointment of respondent no. 1 the said school was governed by the M.P. Ashaskiya School Viniyam Adhiniyam, 1975 – Which received the assent of the President on the 18 th October, 1975 assetn first published in the Madhya Pradesh for their better organization and development and matters connected therewith or incidental thereto.

4. Para 3 of Chapter II of the said Act reproduced below, "Power of State Government to regulate school education.-On and from the commencement of this Act, the State Government may regulate education in all the schools in the State in accordance with the provisions of this Act and the rules made thereunder."

25. He has relied upon few judgments of this Court as noted above to fortify his submissions that the writ application filed before the learned single Judge was maintainable and should have been entertained on its own merits.

ANALYSIS

26. Having heard the learned counsel appearing for the appellants and the respondent No. 1 in person and also having considered the materials on record, we now proceed to answer the two pivotal issues referred to above by us.

27. The respondent No. 1 herein has laid much emphasis on the fact that at the time of his appointment in the school, the same was affiliated to the Madhya Pradesh State Board. It is his case that at the relevant point of time the school used to receive the grant-in-aid from the State Government of Madhya Pradesh. Later in point of time, the school came to be affiliated to the CBSE. The argument of the respondent No. 1 seems to be that as the school is affiliated to the Central Board i.e. the CBSE, it falls within the ambit of "State" under Article 12 of the Constitution. The school is affiliated to the CBSE for the purpose of imparting elementary education under the Right of Children to Free and Compulsory Education Act, 2009 (for short, "Act 2009"). As the appellant No. 1 is engaged in imparting of education, it could be said to be performing public functions. To put it in other words, the appellant No. 1 could be said to be performing public duty. Even if a body performing public duty is amenable to the writ jurisdiction, all its decisions are not subject to judicial review. Only those decisions which have public element therein can be judicially reviewed under the writ jurisdiction. If the action challenged does not have the public element, a writ of mandamus cannot be issued as the action could be said to be essentially of a private character.

28. We may at the outset state that the CBSE is only a society registered under the Societies Registration Act, 1860 and the school affiliated to it is not a creature of the statute and hence not a statutory body. The distinction between a body created by the statute and a body governed in accordance with a statute has been explained by this Court in the Executive Committee of Vaish Degree College v. Lakshimi Narain, (1976) 2 SCC 58, as follows: "It is, therefore, clear that there is a well marked distinction between a body which is created by the statute and a body which after having come into existence is governed in accordance with the provisions of the statute. In other words, the position seems to be that the institution concerned must owe its very existence to a statute which would be the fountain-head of its powers. The question in such cases to be asked is, if there is no statute would the institution have any legal existence. If the answer is in the negative, then undoubtedly it is a statutory body, but if the institution has a separate existence of its own without any reference to the statute concerned but is merely governed by the statutory provisions it cannot be said to be a statutory body."

29. As stated above, the school is affiliated to the CBSE for the sake of convenience, namely, for the purpose of recognition and syllabus or the courses of study and the provisions of the Act 2009 and the rules framed thereunder.

30. The contention canvassed by the respondent No. 1 is that a Writ Petition is maintainable against the Committee of Management controlling the affairs of an institution (minority) run by it, if it violates any rules and byelaws laid down by the CBSE. First, as discussed above, the CBSE itself is not a statutory body nor the regulations framed by it has any statutory force. Secondly, the 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.

31. In Km. Regina v. St. Aloysins High Elementary School and another,(1972) 4 SCC 188 : AIR 1971 SC 1920, this Court held that the mere fact that an institution is recognised by an authority, does not itself create an enforceable right to an aggrieved party against the Management by a teacher on the ground of breach or non-compliance of any of the Rules which was part of terms of the recognition. It was observed as under :-"The Rules thus govern the terms on which the Government would grant recognition and aid and the Government can enforce these rules upon the management. But the enforcement of such rules is a matter between the Government and the management, and a third party, such as teacher aggrieved by some order of the management cannot derive from the rules any enforceable right against the management on the ground of breach or non-compliance of any of the rules."

32. In Km. Anita Verma v. D.A.V. College Management Committee, Unchahar, Rai Bareilly, (1992) 1 UPLBEC 30:-"....30 where the services of a teacher were terminated, the Court held that the writ petition under Article 226 is not maintainable as the institution cannot be treated as the instrumentality of the State. The matter was considered in detail in M/s. Habans Kaur v. Committee of Management, Guru Teghahadur Public School, Meerut and Anr., 1992 Labour and Industrial Cases 2070 (All), wherein the services of the petitioner were terminated by the Managing Committee of the institution recognised by the C.B.S.E. It was held that the Affiliation Bye-laws framed by the C.B.S.E. has no statutory force. The Court under Article 226 of the Constitution of India can enforce compliance of statutory provision against a Committee of Management as held in a Full Bench decision of this Court in Aley Ahmad Abdi v. District Inspector of Schools, Allahabad and Ors., AIR 1977 All. 539. The Affiliation Bye-laws of C.B.S.E. having no statutory force, the only remedy against the aggrieved person is to approach C.B.S.E. putting his grievances in relation to the violation of the Affiliation Bye-laws by the institution."

33. Thus, 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 the Affiliation Byelaws, the appropriate remedy of such teacher or employee is to approach the CBSE or to take such other legal remedy available under law. 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 the Committee of Management has not performed its duties in accordance with the Affiliation Byelaws.

34. It needs no elaboration to state that a school affiliated to the CBSE which is unaided is not a State within Article 12 of the Constitution of India [See : Satimbla Sharma v. St. Pauls Senior Secondary School [(2011) 13 SCC 760]. Nevertheless the school discharges a public duty of imparting education which is a fundamental right of the citizen [See : K. Krishnamacharyulu v. Sri Venkateshwara Hindu College of Engineering, (1997) 3 SCC 571]. The school affiliated to the CBSE

is therefore an “authority” amenable to the jurisdiction under Article 226 of the Constitution of India [See : Binny Ltd. and another v. V. Sadasivan and others, (2005) 6 SCC 657]. However, a judicial review of the action challenged by a party can be had by resort to the writ jurisdiction only if there is a public law element and not to enforce a contract of personal service. A contract of personal service includes all matters relating to the service of the employee – confirmation, suspension, transfer, termination, etc. [See : Apollo Tyres Ltd. v. C.P. Sebastian, (2009) 14 SCC 360].

35. This Court in the case of K.K. Saksena v. International Commission on Irrigation and Drainage and others, (2015) 4 SCC 670, after an exhaustive review of its earlier decisions on the subject, held as follows:☐“43. What follows from a minute and careful reading of the aforesaid judgments of this Court is that if a person or authority is a 'State' within the meaning of Article 12 of the Constitution, admittedly a writ petition under Article 226 would lie against such a person or body. However, we may add that even in such cases writ would not lie to enforce private law rights. There are catena of judgments on this aspect and it is not necessary to refer to those judgments as that is the basic principle of judicial review of an action under the administrative law. Reason is obvious. Private law is that part of a legal system which is a part of Common Law that involves relationships between individuals, such as law of contract or torts. Therefore, even if writ petition would be maintainable against an authority, which is 'State' under Article 12 of the Constitution, before issuing any writ, particularly writ of mandamus, the Court has to satisfy that action of such an authority, which is challenged, is in the domain of public law as distinguished from private law.

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52. It is trite that contract of personal service cannot be enforced. There are three exceptions to this rule, namely:

> (i) when the employee is a public servant working under the Union of India or State;
>
> (ii) when such an employee is employed by an authority/ body which is a State within the meaning of Article 12 of the Constitution of India; and
>
> (ii) when such an employee is 'workmen' within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 and raises a dispute regarding his termination by invoking the machinery under the said Act.

In the first two cases, the employment ceases to have private law character and 'status' to such an employment is attached. In the third category of cases, it is the Industrial Disputes Act which confers jurisdiction on the labour court/industrial tribunal to grant reinstatement in case termination is found to be illegal.”

36. The following decisions have been adverted to in K.K. Saksena (supra):☐

1. Shri Anadi Mukta Sadguru Shree Muktajee Vandasjiswami Suvarna Jayanti Mahotsav Smarak Trust & Ors. v. V.R. Rudani & Ors.(1989) 2 SCC 691

2. G. Bassi Reddy v. International Crops Research Institute & Anr., (2003) 4 SCC 225

3. Praga Tools Corporation v. Shri C.A. Imanual, (1969) 1 SCC 585

4. Federal Bank Ltd. v. Sagar Thomas, (2003) 10 SCC

37. This Court in Janet Jeyapaul v. SRM University & Ors., reported in 2015 (13) SCALE 622, held that when a private body exercises its public functions even if it is not a State, the aggrieved person has a remedy, not only under the ordinary law, but also by way of a writ petition under Article 226 of the Constitution. In the case of Binny Ltd. (supra), this Court held that the Article 226 of the Constitution is couched in such a way that a writ of mandamus could be issued even against a private authority. However, such private authority must be discharging a public function and that the decision sought to be corrected or enforced must be in the discharge of public function.

38. Paragraph 11 of the judgment in Binny Ltd. (supra) is reproduced below:□"Judicial review is designed to prevent the cases of abuse of power and neglect of duty by public authorities. However, under our Constitution, Article 226 is couched in such a way that a writ of mandamus could be issued even against a private authority. However, such private authority must be discharging a public function and that the decision sought to be corrected or enforced must be in discharge of a public function. The role of the State expanded enormously and attempts have been made to create various agencies to perform the governmental functions. Several corporations and companies have also been formed by the government to run industries and to carry on trading activities. These have come to be known as Public Sector Undertakings. However, in the interpretation given to Article 12 of the Constitution, this Court took the view that many of these companies and corporations could come within the sweep of Article 12 of the Constitution. At the same time, there are private bodies also which may be discharging public functions. It is difficult to draw a line between the public functions and private functions when it is being discharged by a purely private authority. A body is performing a "public function" when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so. Bodies therefore exercise public functions when they intervene or participate in social or economic affairs in the public interest….” (Emphasis supplied)

39. This Court considered various of its other decisions to examine the question of public law remedy under Article 226 of the Constitution. This Court observed in Binny Ltd. (supra) as under:□ “29. Thus, it can be seen that a writ of mandamus or the remedy under Article 226 is pre□eminently a public law remedy and is not generally available as a remedy against private wrongs. It is used for enforcement of various rights of the public or to compel the public/statutory authorities to discharge their duties and to act within their bounds. It may be used to do justice when there is wrongful exercise of power or a refusal to perform duties. This writ is admirably equipped to serve as a judicial control over administrative actions. This writ could also be issued against any private body or person, specially in view of the words used in Article 226 of the Constitution.

However, the scope of mandamus is limited to enforcement of public duty. The scope of mandamus is determined by the nature of the duty to be enforced, rather than the identity of the authority

against whom it is sought. If the private body is discharging a public function and the denial of any right is in connection with the public duty imposed on such body, the public law remedy can be enforced. The duty cast on the public body may be either statutory or otherwise and the source of such power is immaterial, but, nevertheless, there must be the public law element in such action. Sometimes, it is difficult to distinguish between public law and private law remedies." (Emphasis supplied)

40. In the penultimate para, this Court ruled as under:□"32. Applying these principles, it can very well be said that a writ of mandamus can be issued against a private body which is not a State within the meaning of Article 12 of the Constitution and such body is amenable to the jurisdiction under Article 226 of the Constitution and the High Court under Article 226 of the Constitution can exercise judicial review of the action challenged by a party. But there must be a public law element and it cannot be exercised to enforce purely private contracts entered into between the parties." (Emphasis supplied)

41. In the background of the above legal position, it can be safely concluded that power of judicial review under Article 226 of the Constitution of India can be exercised by the High Court even if the body against which an action is sought is not State or an Authority or an Instrumentality of the State but there must be a public element in the action complained of.

42. A reading of the above extract shows that the decision sought to be corrected or enforced must be in the discharge of a public function. No doubt, the aims and objective of the appellant No. 1 herein is to impart education, which is a public function. However, the issue herein is with regard to the termination of service of the respondent No. 1, which is basically a service contract. A body is said to be performing a public function when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so.

43. In the case of Committee of Management, Delhi Public School & Anr. v. M.K. Gandhi, reported in (2015) 17 SCC 353, this Court held that no writ is maintainable against a private school as it is not a "State" within the meaning of Article 12 of the Constitution of India.

44. In the case of Trigun Chand Thakur v. State of Bihar & Ors., reported in (2019) 7 SCC 513, this Court upheld the view of a Division Bench of the Patna High Court which held that a teacher of privately managed school, even though financially aided by the State Government or the Board, cannot maintain a writ petition against an order of termination from service passed by the Management.

45. In the case of Satimbla Sharma (supra), this Court held that the unaided private minority schools over which the Government has no administrative control because of their autonomy under Article 30(1) of the Constitution are not "State" within the meaning of Article 12 of the Constitution. As the right to equality under Article 14 of the Constitution is available against the State, it cannot be claimed against unaided private minority private schools.

46. The Full Bench of the Allahabad High Court in the case of Roychan Abraham v. State of U.P., AIR 2019 All 96, after taking into consideration various decisions of this Court, held as under:□"38. Even if it be assumed that an educational institution is imparting public duty, the act complained of must have direct nexus with the discharge of public duty. It is undisputedly a public law action which confers a right upon the aggrieved to invoke 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 petition under Article 226. Wherever Courts have intervened in exercise of jurisdiction under Article 226, either the service conditions were regulated by 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." (Emphasis supplied)

47. We may refer to and rely upon one order passed by this Court in the case of S.K. Varshney v. Principal, Our Lady of Fatima H.S.S., in the Civil Appeal Nos. 8783□8784 of 2003 dated July 19, 2007, in which the dispute was one relating to the retirement age of a teacher working in an unaided institution. This Court, while dismissing the appeal preferred by the employee, held as under:□ "Both the petitions were dismissed by the learned single Judge on the ground that no writ would lie against unaided private institutions and the writ petitions were not maintainable.

Aggrieved thereby, writ appeals have been filed before the Division Bench without any result. The Division Bench held that the writ petitions are not maintainable against a private institute. Aggrieved thereby, these appeals have been filed.

Counsel for the appellant relied on a decision rendered by this Court in K. Krishnamacharyulu & Ors. Vs. Sri Venkateswara Hindu College of Engineering & Anr., (1997) 3 SCC 571. He particularly relied on the observation made by this Court in paragraph 4 of the order that when an element of public interest is created and the institution is catering to that element, the teacher, being the arm of the institution, is also entitled to avail of the remedy provided under Article 226. This Court in Sushmita Basu & Ors. Vs. Ballygunge Siksha Samity & Ors., (2006) 7 SCC 680 in which one of us (Sema, J.) is a party, after considering the aforesaid judgment has distinguished the ratio by holding that the writ under Article 226 of the Constitution against a private educational institute would be justified only if a public law element is involved and if it is only a private law remedy no writ petition would lie. In the present cases, there is no question of public law element involved inasmuch as the grievances of the appellants are of personal nature. We, accordingly, hold that writ petitions are not maintainable against the private institute. There is no infirmity in the order passed by the learned single Judge and affirmed by the Division Bench. These appeals are devoid of merit and are, accordingly, dismissed. No costs." (Emphasis supplied)

48. We may also refer to and rely upon the decision of this Court in the case of Vidya Ram Misra v. The Managing Committee Shri Jai Narain College, (1972) 1 SCC 623 : AIR 1972 SC 1450. The appellant therein filed a writ petition before the Lucknow Bench of the High Court of Allahabad challenging the validity of a resolution passed by the Managing Committee of Shri Jai Narain College, Lucknow, an associated college of the Lucknow University, terminating his services and praying for issue of an appropriate writ or order quashing the resolution. A learned single Judge of

the High Court finding that in terminating the services, the Managing Committee acted in violation of the principles of natural justice, quashed the resolution and allowed the writ petition. The Managing Committee appealed against the order. A Division Bench of the High Court found that the relationship between the college and the appellant therein was that of master and servant and that even if the service of the appellant had been terminated in breach of the audi alteram partem rule of natural justice, the remedy of the appellant was to file a suit for damages and not to apply under Article 226 of the Constitution for a writ or order in the nature of certiorari and that, in fact, no principle of natural justice was violated by terminating the services of the appellant. The writ petition was dismissed. In appeal, this Court upheld the decision of the High Court holding that the Lecturer cannot have any cause of action on breach of the law but only on breach of the contract, hence he has a remedy only by way of suit for damages and not by way of writ under Article 226 of the Constitution. In Vidya Ram Misra (supra), this Court observed thus:

> "12. Whereas in the case of Prabhakar Ramakrishna Jody v. A.L. Pande (1965) 2 SCR 713, the terms and conditions of service embodies in Clause 8(vi)(a) of the 'College Code' had the force of law apart from the contract and conferred rights on the appellant there, here the terms and conditions mentioned in Statute 151 have no efficacy, unless they are incorporated in a contract. Therefore, appellant cannot found a cause of action on any breach of the law but only on the breach of the contract. As already indicated, Statute 151 does not lay down any procedure for removal of a teacher to be incorporated in the contract. So, Clause 5 of the contract can, in no event, have even statutory flavour and for its breach, the appellant's remedy lay elsewhere.
>
> 13. Besides, in order that the third exception to the general rule that no writ will lie to quash an order terminating a contract of service, albeit illegally, as stated in S.R Tewari v. District Board, Agra, (1964) 3 SCR 55 : AIR 1964 SC 1680, might apply, it is necessary that the order must be the order of a statutory body acting in breach of a mandatory obligation imposed by a statute. The college, or the Managing Committee in question, is not a statutory body and so the argument of Mr. Setalvad that the case in hand will fall under the third exception cannot be accepted. The contention of counsel that this Court has sub□silentio sanctioned the issue of a writ under Article 226 to quash an order terminating services of a teacher passed by a college similarly situate in Prabhakar Ramakrishna Jodh (supra), and, therefore, the fact that the college or the Managing Committee was not a statutory body was no hindrance to the High Court issuing the writ prayed for by the appellant has no merit as this Court expressly stated in the judgment that no such contention was raised in the High Court and so it cannot be allowed to be raised in this Court."
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> 49. In the case on hand, the facts are similar. Rule 26(1) of the Affiliation Byelaws, framed by the CBSE, provides that each school affiliated with the Board shall frame Service Rules. Sub□rule (2) of it provides that a service contract will be entered with each employee as per the provision in the Education Act of the State/U.T. or as given in the Appendix III, if not obligatory as per the State Education Act. These rules also

> provide procedures for appointments, probation, confirmation, recruitment, attendance representations, grant of leave, code of conduct, disciplinary procedure, penalties, etc. The model form of contract of service, to be executed by an employee, given in Appendix III, lays down that the service, under this agreement, will be liable to disciplinary action in accordance with the Rules and Regulations framed by the school from time to time. Only in case where the post is abolished or an employee intends to resign, Rule 31 of Affiliation Byelaws of the Board will apply. It may be noted that the above byelaws do not provide for any particular procedure for dismissal or removal of a teacher for being incorporated in the contract. Nor does the model form of contract given in the Appendix III lays down any particular procedure for that purpose. On the contrary, the disciplinary action is to be taken in accordance with the Rules and Regulations framed by the school from time to time.
>
> 50. On a plain reading of these provisions, it becomes clear that the terms and conditions mentioned in the Affiliation Byelaws may be incorporated in the contract to be entered into between the school and the employee concerned. It does not say that the terms and conditions have any legal force, until and unless they are embodied in an agreement. To put it in other words, the terms and conditions of service mentioned in the Chapter VII of the Affiliation Byelaws have no force of law. They become terms and conditions of service only by virtue of their being incorporated in the contract. Without the contract they have no vitality and can confer no legal rights. The terms and conditions mentioned in the Affiliation Byelaws have no efficacy, unless they are incorporated in a contract. In the absence of any statutory provisions governing the services of the employees of the school, the service of the respondent no.

1 was purely contractual. A contract of personal service cannot be enforced specifically. Therefore, the respondent no. 1 cannot find a cause of action on any breach of the law, but only on the breach of the contract. That being so, the appellant's remedy lies elsewhere and in no case the writ is maintainable.

51. Thus, the aforesaid order passed by this Court makes it very clear that in a case of retirement and in case of termination, no public law element is involved. This Court has held that a writ under Article 226 of the Constitution against a private educational institution shall be maintainable only if a public law element is involved and if there is no public law element is involved, no writ lies.

52. In T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481, an eleven□Judge Bench of this Court formulated certain points in fact to reconsider its earlier decision in the case of Ahmedabad St. Xavier's College Society v. State of Gujarat, (1974) 1 SCC 717, and also the case of Unnikrishnan P.J. v. State of A.P., reported in (1993) 4 SCC 111, regarding the "right of the minority institution including administration of the student and imparting education vis□à□vis the right of administration of the non□minority student". In the said case, very important points arose as follows:□"5. (c) Whether the statutory provisions which regulate the facets of administration like control over educational agencies, control over governing bodies, conditions of affiliation including

recognition/withdrawal thereof, and appointment of staff, employees, teachers and principals including their service conditions and regulation of fees etc. would interfere with the right of administration of minorities?

A. So far as the statutory provisions regulating the facets of administration are concerned, in case of an unaided minority educational institution, the regulatory measure of control should be minimal and the conditions of recognition as well as conditions of affiliation to a university or board have to be complied with, but in the matter of day-to-day management, like appointment of staff, teaching and non-teaching and administrative control over them, the management should have the freedom and there should not be any external controlling agency. However, a rational procedure for selection of teaching staff and for taking disciplinary action has to be evolved by the management itself. For redressing the grievances of such employees who are subjected to punishment or termination from service, a mechanism will have to be evolved and in our opinion, appropriate tribunals could be constituted, and till then, such tribunal could be presided over by a judicial officer of the rank of District Judge. The State or other controlling authorities, however, can always prescribe the minimum qualifications, salaries, experience and other conditions bearing on the merit of an individual for being appointed as a teacher of an educational institution. Regulations can be framed governing service conditions for teaching and other staff for whom aid is provided by the State without interfering with overall administrative control of management over the staff, government/ university representative can be associated with the Selection Committee and the guidelines for selection can be laid down. In regard to unaided minority educational institutions such regulations, which will ensure a check over unfair practices and general welfare of teachers could be framed."

53. We now procced to look into the two decisions of this Court in the cases of Ramesh Ahluwalia (supra) and Marwari Balika Vidhyalaya (supra) resply.

54. In Ramesh Ahluwalia (supra), the appellant therein was working as an administrative officer in a privately run educational institution and by way of disciplinary proceedings, was removed from service by the managing committee of the said educational institution. A writ petition was filed before the learned single Judge of the High Court challenging the order of the disciplinary authority wherein he was removed from service. The writ petition was ordered to be dismissed in limine holding that the said educational institution being an unaided and a private school managed by the society cannot be said to be an instrument of the State. The appeal before the Division Bench also came to be dismissed. The matter travelled to this Court. The principal argument before this Court was in regard to the maintainability of the writ petition against a private educational institution. It was argued on the behalf of the appellant therein that although a private educational institution may not fall within the definition of "State" or "other authorities/ instrumentalities" of the State under Article 12 of the Constitution, yet a writ petition would be maintainable as the said educational institution could be said to be discharging public functions by imparting education. However, the learned counsel for the educational institution therein took a plea before this Court that while considering whether a body falling with the definition of "State", it is necessary to consider whether such body is financially, functionally and administratively dominated by or under the control of the government. It was further argued that if the control is merely regulatory either under a statute or otherwise, it would not ipso facto make the body "State" within Article 12 of the Constitution. On the

conspectus of the peculiar facts of the case and the submissions advanced, this Court held that a writ petition would be maintainable if a private educational institution discharges public functions, more particularly imparting education. Even by holding so, this Court declined to extend any benefits to the teacher as the case involved disputed questions of fact.

55. We take notice of the fact that in Ramesh Ahluwalia (supra) the attention of the Hon'ble Judges was not drawn to the earlier decisions of this Court in K. Krishnamacharyulu (supra), Federal Bank (supra), Sushmita Basu v. Ballygunge Siksha Samity, (2006) 7 SCC 680, and Committee of Management, Delhi Public School v. M.K. Gandhi (supra).

56. In Marwari Balika Vidhyalaya (supra), this Court followed Ramesh Ahluwalia (supra) referred to above.

57. We may say without any hesitation that the respondent No. 1 herein cannot press into service the dictum as laid down by this Court in the case of Marwari Balika Vidhyalaya (supra) as the said case is distinguishable. The most important distinguishing feature of the case of Marwari Balika Vidhyalaya (supra) is that in the said case the removal of the teacher from service was subject to the approval of the State Government. The State Government took a specific stance before this Court that its approval was required both for the appointment as well as removal of the teacher. In the case on hand, indisputably the government or any other agency of the government has no role to play in the termination of the respondent No. 1 herein.

58. In context with Marwari Balika Vidhyalaya (supra), we remind ourselves of the Byelaw 49(2) which provides that no order with regard to the imposition of major penalty shall be made by the disciplinary authority except after the receipt of the approval of the disciplinary committee. Thus unlike Marwari Balika Vidhyalaya (supra) where approval was required of the State Government, in the case on hand the approval is to be obtained from the disciplinary committee of the institution. This distinguishing feature seems to have been overlooked by the High Court while passing the impugned order.

59. In Marwari Balika Vidhyalaya (supra), the school was receiving grant-in-aid to the extent of dearness allowance. The appointment and the removal, as noted above, is required to be approved by the District Inspector of School (Primary Education) and, if any action is taken dehors such mandatory provisions, the same would not come within the realm of private element.

60. In Trigun Chand Thakur (supra), the appellant therein was appointed as a Sanskrit teacher and a show cause notice was issued upon him on the ground that he was absent on the eve of the Independence day and the Teachers day which resulted into a dismissal order passed by the Managing Committee of the private school. The challenge was made by filing a writ petition before the High Court which was dismissed on the ground that the writ petition is not maintainable against an order terminating the service by the Managing Committee of the private school. This Court held that even if the private school was receiving a financial aid from the Government, it does not make the said Managing Committee of the school a "State" within the meaning of Article 12 of the Constitution of India.

61. Merely because a writ petition can be maintained against the private individuals discharging the public duties and/or public functions, the same should not be entertained if the enforcement is sought to be secured under the realm of a private law. It would not be safe to say that the moment the private institution is amenable to writ jurisdiction then every dispute concerning the said private institution is amenable to writ jurisdiction. It largely depends upon the nature of the dispute and the enforcement of the right by an individual against such institution. The right which purely originates from a private law cannot be enforced taking aid of the writ jurisdiction irrespective of the fact that such institution is discharging the public duties and/or public functions. The scope of the mandamus is basically limited to an enforcement of the public duty and, therefore, it is an ardent duty of the court to find out whether the nature of the duty comes within the peripheral of the public duty. There must be a public law element in any action.

62. Our present judgment would remain incomplete if we fail to refer to the decision of this Court in the case of Ramakrishnan Mission v. Kago Kunya, (2019) 16 SCC 303. In the said case this Court considered all its earlier judgments on the issue. The writ petition was not found maintainable against the Mission merely for the reason that it was found running a hospital, thus discharging public functions/public duty. This Court considered the issue in reference to the element of public function which should be akin to the work performed by the State in its sovereign capacity. This Court took the view that every public function/public duty would not make a writ petition to be maintainable against an "authority" or a "person" referred under Article 226 of the Constitution of India unless the functions are such which are akin to the functions of the State or are sovereign in nature. Few relevant paragraphs of the said judgment are quoted as under for ready reference: "17. The basic issue before this Court is whether the functions performed by the hospital are public functions, on the basis of which a writ of mandamus can lie under Article 226 of the Constitution.

18. The hospital is a branch of the Ramakrishna Mission and is subject to its control. The Mission was established by Swami Vivekanand, the foremost disciple of Shri Ramakrishna Paramhansa. Service to humanity is for the organisation co-equal with service to God as is reflected in the motto "Atmano Mokshartham Jagad Hitaya Cha". The main object of the Ramakrishna Mission is to impart knowledge in and promote the study of Vedanta and its principles propounded by Shri. Ramakrishna Paramahansa and practically illustrated by his own life and of comparative theology in its widest form. Its objects include, inter alia to establish, maintain, carry on and assist schools, colleges, universities, research institutions, libraries, hospitals and take up development and general welfare activities for the benefit of the underprivileged/backward/tribal people of society without any discrimination. These activities are voluntary, charitable and non-profit making in nature. The activities undertaken by the Mission, a non-profit entity are not closely related to those performed by the State in its sovereign capacity nor do they partake of the nature of a public duty.

19. The Governing Body of the Mission is constituted by members of the Board of Trustees of Ramakrishna Math and is vested with the power and authority to manage the organisation. The properties and funds of the Mission and its management vest in the Governing Body. Any person can become a member of the Mission if elected by the Governing Body. Members on roll form the quorum of the annual general meetings. The Managing Committee comprises of members appointed by the Governing Body for managing the affairs of the Mission. Under the Memorandum

of Association and Rules and Regulations of the Mission, there is no governmental control in the functioning, administration and day to day management of the Mission. The conditions of service of the employees of the hospital are governed by service rules which are framed by the Mission without the intervention of any governmental body.

20. In coming to the conclusion that the appellants fell within the description of an authority under Article 226, the High Court placed a considerable degree of reliance on the judgment of a two-Judge Bench of this Court in Andi Mukta [Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani, (1989) 2 SCC 691]. Andi Mukta [Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani, (1989) 2 SCC 691] was a case where a public trust was running a college which was affiliated to Gujarat University, a body governed by the State legislation. The teachers of the University and all its affiliated colleges were governed, insofar as their pay scales were concerned, by the recommendations of the University Grants Commission. A dispute over pay scales raised by the association representing the teachers of the University had been the subject-matter of an award of the Chancellor, which was accepted by the government as well as by the University. The management of the college, in question, decided to close it down without prior approval. A writ petition was instituted before the High Court for the enforcement of the right of the teachers to receive their salaries and terminal benefits in accordance with the governing provisions. In that context, this Court dealt with the issue as to whether the management of the college was amenable to the writ jurisdiction. A number of circumstances weighed in the ultimate decision of this Court, including the following:

> 20.1. The trust was managing an affiliated college.
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> 20.2. The college was in receipt of government aid.
>
> 20.3. The aid of the government played a major role in the control, management and work of the educational institution.
>
> 20.4. Aided institutions, in a similar manner as government institutions, discharge a public function of imparting education to students. 20.5. All aided institutions are governed by the rules and regulations of the affiliating University. 20.6. Their activities are closely supervised by the University.
>
> 20.7. Employment in such institutions is hence, not devoid of a public character and is governed by the decisions taken by the University which are binding on the management.
>
> 21. It was in the above circumstances that this Court came to the conclusion that the service conditions of the academic staff do not partake of a private character, but are governed by a right-duty relationship between the staff and the management. A breach of the duty, it was held, would be amenable to the remedy of a writ of mandamus. While the Court recognised that “the fast expanding maze of bodies

affecting rights of people cannot be put into watertight compartments", it laid down two exceptions where the remedy of mandamus would not be available : (SCC p.

698, para 15) "15. If the rights are purely of a private character no mandamus can issue. If the management of the college is purely a private body with no public duty mandamus will not lie. These are two exceptions to mandamus."

22. Following the decision in Andi Mukta [Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani, (1989) 2 SCC 691], this Court has had the occasion to re-visit the underlying principles in successive decisions. This has led to the evolution of principles to determine what constitutes a "public duty" and "public function" and whether the writ of mandamus would be available to an individual who seeks to enforce her right.

25. A similar view was taken in Ramesh Ahluwalia v. State of Punjab [Ramesh Ahluwalia v. State of Punjab, (2012) 12 SCC 331 : (2013) 3 SCC (L&S) 456 : 4 SCEC 715], where a two-Judge Bench of this Court held that a private body can be held to be amenable to the jurisdiction of the High Court under Article 226 when it performs public functions which are normally expected to be performed by the State or its authorities.

26. In Federal Bank Ltd. v. Sagar Thomas [Federal Bank Ltd. v. Sagar Thomas, (2003) 10 SCC 733], this Court analysed the earlier judgments of this Court and provided a classification of entities against whom a writ petition may be maintainable : (SCC p. 748, para 18) "18. From the decisions referred to above, the position that emerges is that a writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State (Government); (ii) an authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State;

(vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature; and (viii) a person or a body under liability to discharge any function under any statute, to compel it to perform such a statutory function."

63. The aforesaid decision of this Court in Ramakrishnan Mission (supra) came to be considered exhaustively by a Full Bench of the High Court of Allahabad in the case of Uttam Chand Rawat v. State of U.P., reported in (2021) 6 All LJ 393 (FB), wherein the Full Bench was called upon to answer the following question:-"(i) Whether the element of public function and public duty inherent in the enterprise that an educational institution undertakes, conditions of service of teachers, whose functions are a sine qua non to the discharge of that public function or duty, can be regarded as governed by the private law of contract and with no remedy available under Article 226 of the Constitution?"

64. The Full Bench proceeded to answer the aforesaid question as under:-"16. The substance of the discussion made above is that a writ petition would be maintainable against the authority or the person which may be a private body, if it discharges public function/public duty, which is otherwise primary function of the State referred in the judgment of the Apex Court in the case of

Ramakrishnan Mission (supra) and the issue under public law is involved. The aforesaid twin test has to be satisfied for entertaining writ petition under Article 226 of the Constitution of India.

17. From the discussion aforesaid and in the light of the judgments referred above, a writ petition under Article 226 of the Constitution would be maintainable against

(i) the Government; (ii) an authority; (iii) a statutory body;

(iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature; and (viii) a person or a body under liability to discharge any function under any statute, to compel it to perform such a statutory function.

18. There is thin line between "public functions" and "private functions" discharged by a person or a private body/authority. The writ petition would be maintainable only after determining the nature of the duty to be enforced by the body or authority rather than identifying the authority against whom it is sought.

19. It is also that even if a person or authority is discharging public function or public duty, the writ petition would be maintainable under Article 226 of the Constitution, if Court is satisfied that action under challenge falls in the domain of public law, as distinguished from private law. The twin tests for maintainability of writ are as follows :

1. The person or authority is discharging public duty/public functions.

2. Their action under challenge falls in domain of public law and not under common law.

20. The writ petition would not be maintainable against an authority or a person merely for the reason that it has been created under the statute or is to governed by regulatory provisions. It would not even in a case where aid is received unless it is substantial in nature. The control of the State is another issue to hold a writ petition to be maintainable against an authority or a person." (Emphasis supplied)

65. We owe a duty to consider one relevant aspect of the matter. Although this aspect which we want to take notice of has not been highlighted by the respondent No.1, yet we must look into the same. We have referred to the CBSE Affiliation Byelaws in the earlier part of our judgment. Appendix□IV of the Affiliation Byelaws is with respect to the minority institutions. Clause 6 of Appendix□IV is with respect to the disciplinary control over the staff in a minority educational institution. We take notice of the fact that in Clause 6, the State has the regulatory power to safeguard the interests of their employees and their service conditions including the procedure for punishment to be imposed. For the sake of convenience and at the cost of repetition, we quote Clause 6 once again as under:

> "6. Disciplinary Control over Staff in Minority Educational Institutions: While the managements should exercise the disciplinary control over staff, it must be ensured that they hold an inquiry and follow a fair procedure before punishment is given. With a view to preventing the possible misuse of power by the management of the Minority Educational Institutions, the State has the regulatory power to safeguard the interests of their employees and their service conditions including procedure for punishment to be imposed." (Emphasis supplied)

66. It could be argued that as the State has regulatory power to safeguard the interests of the employees serving with the minority institutions, any action or decision taken by such institution is amenable to writ jurisdiction under Article 226 of the Constitution.

67. In the aforesaid context, we may only say that merely because the State Government has the regulatory power, the same, by itself, would not confer any such status upon the institution (school) nor put any such obligations upon it which may be enforced through issue of a Writ under Article 226 of the Constitution. In this regard, we may refer to and rely upon the decision of this Court in the case of Federal Bank (supra). While deciding whether a private bank that is regulated by the Banking Regulation Act, 1949 discharges any public function, this Court held thus:□"33. ... in our view, a private company carrying on banking business as a scheduled bank, cannot be termed as an institution or a company carrying on any statutory or public duty. A private body or a person may be amenable to writ jurisdiction only where it may become necessary to compel such body or association to enforce any statutory obligations or such obligations of public nature casting positive obligation upon it. We don't find such conditions are fulfilled in respect of a private company carrying on a commercial activity of banking. Merely regulatory provisions to ensure such activity carried on by private bodies work within a discipline, do not confer any such status upon the company nor put any such obligation upon it which may be enforced through issue of a writ under Article 226 of the Constitution. Present is a case of disciplinary action being taken against its employee by the appellant Bank. The respondent's service with the Bank stands terminated. The action of the Bank was challenged by the respondent by filing a writ petition under Article 226 of the Constitution of India. The respondent is not trying to enforce any statutory duty on the part of the Bank."

34. Thus, contracts of a purely private nature would not be subject to writ jurisdiction merely by reason of the fact that they are structured by statutory provisions. The only exception to this principle arises in a situation where the contract of service is governed or regulated by a statutory provision. Hence, for instance, in K.K. Saksena [K.K. Saksena v. International Commission on Irrigation & Drainage, (2015) 4 SCC 670 : (2015) 2 SCC (Civ) 654 : (2015) 2 SCC (L&S) 119] this Court held that when an employee is a workman governed by the Industrial Disputes Act, 1947, it constitutes an exception to the general principle that a contract of personal service is not capable of being specifically enforced or performed.

35. It is of relevance to note that the Act was enacted to provide for the regulation and registration of clinical establishments with a view to prescribe minimum standards of facilities and services. The Act, inter alia, stipulates conditions to be satisfied by clinical establishments for registration.

However, the Act does not govern contracts of service entered into by the hospital with respect to its employees. These fall within the ambit of purely private contracts, against which writ jurisdiction cannot lie. The sanctity of this distinction must be preserved." (Emphasis supplied)

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 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.

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.

71. There shall be no order as to costs.

72. Pending application, if any, also stands disposed of.

……J. (ANIRUDDHA BOSE) ……J. (J.B. PARDIWALA) NEW DELHI;

AUGUST 24, 2022