Dr. Janet Jeyapaul vs Srm University And Anr on 15 December, 2015

Equivalent citations: AIR 2016 SUPREME COURT 73, AIR 2016 SC (CIVIL) 499, (2016) 1 ESC 31, (2015) 13 SCALE 622, (2016) 1 JLJR 261, (2016) 1 SERVLJ 95, (2016) 2 ALL WC 1179, (2016) 1 PAT LJR 417, (2016) 1 SCT 326, (2016) WRITLR 289, 2015 (16) SCC 530, (2016) 1 SERVLR 497, (2016) 1 ALLMR 971 (SC), (2016) 1 MAD LJ 231

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Bench: Abhay Manohar Sapre, J. Chelameswar

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 14553 OF 2015
(Arising out of SLP(C) No.11208/2015)

Dr. Janet Jeyapaul .....Appellant(s)

VERSUS

SRM University & Ors. .....Respondent(s)

J U D G M E N T

Abhay Manohar Sapre, J.

1. Leave granted.

2. This appeal is filed by the appellant-in-person against the judgment and order dated 04.07.2013 passed by the High Court of Judicature at Madras in Writ Appeal No. 932 of 2013 whereby the Division Bench of the High Court allowed the writ appeal filed by the respondents herein against the order dated 08.04.2013 passed by the Single Judge of the High Court in W.P. No. 12676 of 2012 and, in consequence, dismissed the writ petition filed by the appellant herein as being not maintainable.

3. In order to appreciate the controversy involved in this appeal, which lie in a narrow compass, it is necessary to set out the relevant facts.

(a) The S.R.M. University-respondent No.1 herein is the Institution engaged in imparting high education in various subjects. The Central Government has, therefore, on the advise of University Grants Commission (in short "UGC") declared respondent No.1 as "Deemed University" by issuing a notification under Section 3 of the University Grants Commission Act, 1956 (in short "the UGC Act"). Respondent No.1 is, therefore, subjected to ensuring compliance of all the provisions of UGC Act in its functioning.

(b) The appellant is holding M.Sc. and P.hd. in applied Biology. She was appointed as a Lecturer in the Department of Bio-technology in the Faculty of Sciences and Humanity in the SRM University-respondent No.1. By order dated 05.05.2010, she was promoted as Senior Lecturer w.e.f. 01.04.2010.

(c) On 14.02.2012, the appellant was served with a memo calling upon her to show cause as to why disciplinary action should not be taken against her for the alleged failure to take classes of the students of B.Sc. Third Year degree course and M.Sc. First Year degree course. The appellant submitted her replies on 15.02.2012 and 20.02.2012 denying the allegations and claiming that she took classes for both the courses.

(d) Thereafter, another memo dated 22.02.2012 was issued by the Registrar in-charge of the University referring certain complaints given against her by the students. Refuting the charges, the appellant submitted her reply on 29.02.2012.

(e) Dissatisfied with the explanation given by the appellant, respondent No.1-SRM University constituted an Enquiry Committee and the appellant appeared before the said Committee on 02.03.2012 and stated that she was not furnished the documents and the copies of the complaints. Thereafter she submitted a detailed explanation on 26.03.2012.

(f) Thereafter the appellant received a notice dated 04.04.2012 mentioning therein that the same shall be treated as one month's notice and she would be relieved from the services w.e.f. 04.05.2012. According to the appellant, she received the notice on 16.04.2012.

(g) Challenging the said notice, the appellant filed Writ Petition No. 12676 of 2012 before the High Court. By order dated 08.04.2013, the Single Judge of the High Court allowed the writ petition, quashed the termination notice and directed the respondents to reinstate the appellant into service.

(h) Against the said order, respondent No.1 herein filed Writ Appeal No. 932 of 2013 before the High Court. By impugned judgment dated 04.07.2013, the Division Bench of the High Court allowed the appeal. It was held that the writ petition filed by the appellant against respondent No.1 was not maintainable as according to the Division Bench, respondent No.1 is neither a State nor an authority within the meaning of Article 12 of the Constitution of India and hence it cannot be subjected to writ jurisdiction of the High Court under Article 226 of the Constitution to examine the legality and correctness of the dismissal order. The Division Bench, therefore, did not examine the merits of the case made out by the appellant successfully before the Single Judge. The Division Bench, however, granted liberty to the appellant to approach the Tribunal for ventilating of her grievance on merits.

(i) Aggrieved by the said judgment, the appellant has preferred this appeal by way of special leave before this Court.

4. Heard appellant-in-person and Mr. Sanjay R. Hegde, learned senior counsel for the respondents.

5. Since the appeal involved a legal issue and the appellant had no legal assistance, we requested Mr. Harish Salve, learned senior counsel, who was present in Court, to assist the Court to enable us to properly appreciate and decide the issues arising in the case.

6. We record our deep sense of appreciation for the valuable assistance rendered by Mr. Harish Salve with his usual fairness and industry and also for submitting his written note on the conclusion of the case on our request.

7. Submissions of Mr. Harish Salve were many fold. According to him, while deciding the question as to whether the writ lies under Article 226 of the Constitution of India against any person, juristic body, organization, authority etc., the test is to examine in the first instance the object and purpose for which such body/authority/organization is formed so also the activity which it undertakes to fulfill the said object/purpose.

8. Pointing out from various well known English commentaries such as De Smith's Judicial Review, 7th Edition, H.W.R.Wade and C.F. Forsyth Administrative law, 10th Edition, Michael J. Beloff in his article Pitch, Pool, Rink,……Court? Judicial Review in the Sporting World, 1989 Public Law 95, English decisions in Breen vs. A.E.U. (1971) 2 QB 175, R. vs. Panel on Take-overs and Mergers, ex parte Datafin Plc and another (Norton Opax Plc and another intervening) (1987) 1 All ER 564, E.S. Evans vs. Charles E. Newton 382 US 296 (1966) and of this Court in Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust & Ors. vs. V.R. Rudani & Ors., (1989) 2 SCC 691 and Zee Telefilms Ltd. vs. Union of India (2005) 4 SCC 649, Mr. Harish Salve submitted that perusal of these authorities/decisions would go to show that there has been a consistent view of all the learned authors and the Courts all over the world including in India that the approach of the Court while deciding such issue is always to test as to whether the concerned body is formed for discharging any "Public function" or "Public duty" and if so, whether it is actually engaged in any public function or/and performing any such duty.

9. According to learned counsel, if the aforesaid twin test is found present in any case then such person/body/organization/authority, as the case may be, would be subjected to writ jurisdiction of the High Court under Article 226 of the Constitution.

10. Learned senior counsel elaborated his submission by pointing out that the expression "any person or authority" used in Article 226 are not confined only to statutory authorities and instrumentalities of the State but may in appropriate case include any other person or body performing "public function/duty". Learned counsel urged that emphasis is, therefore, always on activity undertaken and the nature of the duty imposed on such authority to perform and not the form of such authority. According to Mr. Harish Salve, once it is proved that the activity undertaken by the authority has a public element then regardless of the form of such authority it would be subjected to the rigor of writ jurisdiction of Article 226 of the Constitution.

11. Learned counsel then urged that in the light of several decisions of this Court, one cannot now perhaps dispute that "imparting education to students at large" is a "public function" and, therefore, if any body or authority, as the case may be, is found to have been engaged in the activity of imparting education to the students at large then irrespective of the status of any such authority, it should be made amenable to writ jurisdiction of the High Court under Article 226 of the Constitution.

12. Learned counsel further pointed out that the case in hand clearly shows that respondent No. 1 - a juristic body is engaged in imparting education in higher studies and what is more significant is that respondent No. 1 is conferred with a status of a “Deemed University" by the Central Government under Section 3 of the UGC Act. These two factors, according to Mr. Harish Salve, would make respondent No. 1 amenable to writ jurisdiction of the High Court under Article 226 because it satisfies the twin test laid down for attracting the rigor of writ jurisdiction of the High Court.

13. In reply, Mr. Sanjay R. Hegde, learned senior counsel for respondent No. 1 while supporting the impugned order contended that if this Court holds that respondent No. 1 is amenable to writ jurisdiction then apart from employees even those who are otherwise dealing with respondent No. 1 would start invoking writ jurisdiction which, according to learned counsel, would open the flood gate of litigation in courts.

14. Having heard learned counsel for the parties and on perusal of the record of the case, we find force in the submissions urged by Mr. Harish Salve.

15. To examine the question urged, it is apposite to take note of what De Smith, a well-known treaty, on the subject "Judicial Review" has said on this question [See De Smith’s Judicial Review, 7th Edition, page 127 (3-

027) and page 135 (3-038)].

“AMENABILITY TEST BASED ON THE SOURCE OF POWER The courts have adopted two complementary approaches to determining whether a function falls within the ambit of the

supervisory jurisdiction. First, the court considers the legal source of power exercised by the impugned decision-maker. In identifying the "classes of case in which judicial review is available", the courts place considerable importance on the source of legal authority exercised by the defendant public authority. Secondly and additionally, where the "source of power" approach does not yield a clear or satisfactory outcome, the court may consider the characteristics of the function being performed. This has enabled the courts to extend the reach of the supervisory jurisdiction to some activities of non-statutory bodies (such as self-regulatory organizations). We begin by looking at the first approach, based on the source of power." "JUDICIAL REVIEW OF PUBLIC FUNCTIONS The previous section considered susceptibility to judicial review based on the source of the power: statute or prerogative. The courts came to recognize that an approach based solely on the source of the public authority's power was too restrictive. Since 1987 they have developed an additional approach to determining susceptibility based on by the type of function performed by the decision-maker. The "public function" approach is, since 2000, reflected in the Civil Procedure Rules: CPR.54.1(2)(a)(ii), defines a claim for judicial review as a claim to the lawfulness of "a decision, action or failure to act in relation to the exercise of a public function." (Similar terminology is used in the Human Rights Act 1998 s.6(3)(b) to define a public authority as "any person certain of whose functions are functions of a public nature", but detailed consideration of that provision is postponed until later). As we noted at the outset, the term "public" is usually a synonym for "governmental"."

16. The English Courts applied the aforesaid test in R. vs. Panel on Take- overs and Mergers, ex parte Datafin Plc and another (Norton Opax Plc and another intervening) (1987) 1 All ER 564, wherein Sir John Donaldson MR speaking for three-judge Bench of Court of Appeal (Civil Division), after examining the various case law on the subject, held as under:

> "In determining whether the decisions of a particular body were subject to judicial review, the court was not confined to considering the source of that body's powers and duties but could also look to their nature. Accordingly, if the duty imposed on a body, whether expressly or by implication, was a public duty and the body was exercising public law functions the court had jurisdiction to entertain an application for judicial review of that body's decisions....."

17. In Andi Mukta's case (supra), the question before this Court arose as to whether mandamus can be issued at the instance of an employee (teacher) against a Trust registered under Bombay Public Trust Act, 1950 which was running an educational institution (college). The main legal objection of the Trust while opposing the writ petition of their employee was that since the Trust is not a statutory body and hence it cannot be subjected to the writ jurisdiction of the High Court. The High Court accepted the writ petition and issued mandamus directing the Trust to make payments towards the employee's claims of salary, provident fund and other dues. The Trust (Management) appealed to this Court.

18. This Court examined the legal issue in detail. Justice K. Jagannatha Shetty speaking for the Bench agreed with the view taken by the High Court and held as under:

> "11. Two questions, however, remain for consideration: (i) The liability of the appellants to pay compensation under Ordinance 120-E and (ii) The maintainability of the writ petition for mandamus as against the management of the college.....
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> 12. The essence of the attack on the maintainability of the writ petition under Article 226 may now be examined. It is argued that the management of the college being a trust registered under the Bombay Public Trust Act is not amenable to the writ jurisdiction of the High Court. The contention in other words, is that the trust is a private institution against which no writ of mandamus can be issued. In support of the contention, the counsel relied upon two decisions of this Court: (a) Executive Committee of Vaish Degree College, Shamli v. Lakshmi Narain, (1976) 2 SCC 58 and (b) Deepak Kumar Biswas v. Director of Public Instructions, (1987) 2 SCC 252. In the first of the two cases, the respondSLP No.11208 of 2015ent institution was a Degree College managed by a registered cooperative society. A suit was filed against the college by the dismissed principal for reinstatement. It was contended that the Executive Committee of the college which was registered under the Cooperative Societies Act and affiliated to the Agra University (and subsequently to Meerut University) was a statutory body.

The importance of this contention lies in the fact that in such a case, reinstatement could be ordered if the dismissal is in violation of statutory obligation. But this Court refused to accept the contention. It was observed that the management of the college was not a statutory body since not created by or under a statute. It was emphasised that an institution which adopts certain statutory provisions will not become a statutory body and the dismissed employee cannot enforce a contract of personal service against a non-statutory body.

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. But once these are absent and when the party has no other equally convenient remedy, mandamus cannot be denied. It has to be appreciated that the appellants trust was managing the affiliated college to which public money is paid as government aid. Public money paid as government aid plays a major role in the control, maintenance and working of educational institutions. The aided institutions like government institutions discharge public function by way of imparting education to students. They are subject to the rules and regulations of the affiliating University. Their activities are closely supervised by the University authorities. Employment in such institutions, therefore, is not devoid of any public character.3 So are the service conditions of the academic staff. When the University takes a decision regarding their pay scales, it will be binding on the management. The service conditions of the academic staff are, therefore, not purely of a private character. It has super-added protection by University decisions creating a legal right-duty relationship between the staff and the management. When there is existence of this relationship, mandamus cannot be refused to the aggrieved party.

20. The term "authority" used in Article 226, in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental

rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words "any person or authority" used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed, if a positive obligation exists mandamus cannot be denied."SLP No.11208 of 2015

19. This issue was again examined in great detail by the Constitution Bench in Zee Telefilms Ltd. & Anr. Vs. Union of India & Ors., (2005) 4 SCC 649 wherein the question which fell for consideration was whether the Board of Control for cricket in India (in short "BCCI") falls within the definition of "State" under Article 12 of the Constitution. This Court approved the ratio laid down in Andi Mukta's case(supra) but on facts of the case held, by majority, that the BCCI does not fall within the purview of the term State. This Court, however, laid down the principle of law in Paras 31 and 33 as under :

> "31. Be that as it may, it cannot be denied that the Board does discharge some duties like the selection of an Indian cricket team, controlling the activities of the players and others involved in the game of cricket. These activities can be said to be akin to public duties or State functions and if there is any violation of any constitutional or statutory obligation or rights of other citizens, the aggrieved party may not have a relief by way of a petition under Article 32. But that does not mean that the violator of such right would go scot-free merely because it or he is not a State. Under the Indian jurisprudence there is always a just remedy for the violation of a right of a citizen. Though the remedy under Article 32 is not available, an aggrieved party can always seek a remedy under the ordinary course of law or by way of a writ petition under Article 226 of the Constitution, which is much wider than Article 32.
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> 33. Thus, it is clear 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 under the Constitution, by way of a writ petition under Article 226....."
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> 20. It is clear from reading of the ratio decidendi of judgment in Zee Telefilms Ltd. (supra) that firstly, it is held therein that the BCCI discharges public duties and secondly, an aggrieved party can, for this reason, seek a public law remedy against the BCCI under Article 226 of the Constitution of India.
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> 21. Applying the aforesaid principle of law to the facts of the case in hand, we are of the considered view that the Division Bench of the High Court erred in holding that respondent No. 1 is not subjected to the writ jurisdiction of the High Court under Article 226 of the Constitution. In other words, it should have been held that respondent No.1 is subjected to the writ jurisdiction of the High Court under Article 226 of the Constitution.

> 22. This we say for the reasons that firstly, respondent No. 1 is engaged in imparting education in higher studies to students at large.

Secondly, it is discharging "public function" by way of imparting education. Thirdly, it is notified as a "Deemed University" by the Central Government under Section 3 of the UGC Act. Fourthly, being a “Deemed University”, all the provisions of the UGC Act are made applicable to respondent No. 1, which inter alia provides for effective discharge of the public function - namely education for the benefit of public. Fifthly, once respondent No. 1 is declared as “Deemed University" whose all functions and activities are governed by the UGC Act, alike other universities then it is an "authority" within the meaning of Article 12 of the Constitution. Lastly, once it is held to be an "authority" as provided in Article 12 then as a necessary consequence, it becomes amenable to writ jurisdiction of High Court under Article 226 of the Constitution.

23. In the light of foregoing discussion, we cannot concur with the finding rendered by the Division Bench and accordingly while reversing the finding we hold that the appellant's writ petition under Article 226 of the Constitution against respondent No. 1 is maintainable.

24. This takes us to the next argument urged by learned counsel for the respondents. Placing reliance on para 231 of the decision of this Court in T.M.A. Pai Foundation & Ors. vs. State of Karnataka & Ors. (2002) 8 SCC 481, learned counsel contended that even assuming that the appellant's writ petition is maintainable, yet it should not be entertained for hearing on merits and instead the appellant be granted liberty to approach the District Judge/Additional District Judge of the concerned District which is designated as Tribunal till formation of regular Tribunal for redressal of her grievances as directed by the Constitution Bench in Para 231 of T.M.A. Pai's case (supra).

25. In normal course, we would have been inclined to accept this submission made by learned counsel for the respondents and would have also granted liberty to the appellant to approach the Tribunal in term of the directions given by the Constitution Bench of this Court. But since in this case, the Single Judge not only entertained the appellant's writ petition but he allowed the writ petition on merits whereas the Division Bench held the writ petition as not maintainable and thus declined to examine the merits of the controversy involved in the writ petition.

26. We do not consider it proper to direct the appellant at this stage to approach the Tribunal and file a dispute before the Tribunal. Instead, we consider it just and proper to remand the case to the Division Bench of the High Court to decide the respondent's appeal on merits on the question as to whether the Single Judge was justified in allowing the writ petition on merits.

27. Before parting, we consider it apposite to state that we have not examined the controversy raised by the appellant in her writ petition on merits and confined our examination to the question whether the writ petition against respondent No. 1 was maintainable or not.

28. In view of foregoing discussion, the appeal succeeds and is allowed. The impugned order is set aside. Writ Appeal No. 932 of 2013 out of which this appeal arises is restored to its original number.

The Division Bench is requested to decide the appeal expeditiously on merits in accordance with law without being influenced by any of our observations.

.....J. [J. CHELAMESWAR] .....J. [ABHAY MANOHAR SAPRE] New Delhi, December 15, 2015.
