IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12439 of 2025

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Abha Rani Wife of Sri Abdhesh Jha, Resident of Jay Prakash Nagar, Ward No 22, M.G. Road, Kahgaria Mukhya Daak Ghar, PS Khagaria, District Khagaria.

... ... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Education, Government of Bihar, Patna.
2. The Principal Secretary, Department of Education, Government of Bihar, Patna.
3. The Director (Secondary Education), Education Department, Government of Bihar, Patna.
4. The District Magistrate, Khagaria.
5. The District Programme Officer (Establishment), Khagaria.
6. The District Education Officer, Khagaria.
7. Plus 2 Arya Kanya Uchaya Vidyalaya, Khagaria governed by a Managing Committee through its Secretary Rajkumar Fogla, Male, aged about 49 years, S/o Late Satyanarayan Fogla, R/o 51, Main road, Khagaria, Near Arya Samaj Mandir, Khagaria Mukhya Dakghar, P.S. Khagaria, District Khagaria, Bihar 851204.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Siddhartha Prasad, Adv Mr. Sumit Kumar, Adv
For the State	:	Mr. Standing Counsel (20) Md. Zeeshan Kalim, AC to SC (20) Mr. Prasad Verma, AC to SC 20
For Res. No. 7		Mr. Sanjeev Ranjan, Adv Ms. Shristi Singh, Adv Mrs. Aditi Sahay, Adv

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CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR SINHA
CAV JUDGMENT
Date : 02-07-2026

Heard the parties.

2. In brief, the factual matrix of this case is that Plus 2 Arya Kanya Uchaya Vidyalaya, Khagaria (Respondent no.7 School) is a Minority Aided School imparting education up to class 12th. In terms of the relevant provisions contained in Bihar

Non-Government Secondary Schools (Taking over of Management and Control) Act, 1981 (for brevity referred to as ‘the 1981 Act’), such schools are required to formulate the service rules governing their teaching and non-teaching staffs and submit the same to the Education Department, Government of Bihar for its approval. Further, the Director, Secondary Education, Education Department, Government of Bihar (respondent no.3), by virtue of the provisions of ‘the 1981 Act’ as amended by the Bihar Non-Government Secondary Schools (Taking over of Management and Control) (Amendment) Act, 2011 (for brevity referred to as ‘the 2011 Amendment Act’) has the regulatory control over the affairs of the minority schools and also exercises disciplinary control over their teaching and non-teaching staffs. The petitioner, possessing the requisite qualifications, was appointed as an Assistant Teacher in the ‘Respondent-7 School’ in the year 1987 by its Managing Committee after adherence to the prescribed selection process and the appointment of the petitioner was duly approved by the then Competent Service Board under Section 18 (3)(b) of ‘the 1981 Act’.

As per the petitioner, her appointment was always subject to various policy decisions and administrative orders issued by the State Government from time-to-time pertaining to

minority aided educational institutions. The benefits of government schemes relating to teaching staffs of minority aided school and also all service related benefits including pay revisions have been extended to the petitioner from time-to-time. It is further the petitioner's case that throughout her long tenure of service in 'Respondent-7 School', there had never been any controversy between her and the managing committee of the 'Respondent-7 School' and the petitioner was discharging her duties with utmost sincerity and diligence. The petitioner further asserts that owing to an *inter-se* dispute between two rival managing committees of the 'Respondent-7 School', each claiming authority through different modes, the petitioner was unnecessarily targeted, which has led to her suspension from service by Letter dated 05.04.2024 (Annexure-P/10) issued by the Secretary of the present managing committee. Consequent thereto, a Letter dated 11.06.2024 (Annexure-P/12) has come to be issued by the District Education Officer, Khagaria, (Respondent no.6) directing the petitioner either to abide by the letter of suspension or to furnish an explanation. Consequent upon the suspension, the petitioner's salary has also been directed to be withheld. The consequential Letter dated 11.06.2024 issued by the District Education Officer, Khagaria, (Respondent no.6) along with the

letter of suspension dated 05.04.2024 issued by the Secretary of the present managing committee of ‘Respondent-7 School’ have been challenged by the petitioner on various grounds, one of the principle grounds being that the suspension order has been passed in absence of approval by the competent government authority, as allegedly mandated under the provisions of ‘the 1981 Act’. During the pendency of the present writ application, the petitioner has also been dismissed from service vide letter dated 10.01.2026 (Annexure-I.A/8) issued by the Secretary of the managing committee of ‘Respondent-7 School’ and the same has been forwarded thereafter to the District Education Officer, Khagaria, (Respondent no.6) and the District Programme Officer (Establishment), Education Department. The said dismissal order dated 10.01.2026 has also been assailed by the petitioner by filing interlocutory application bearing I.A. No.01 of 2026, *inter alia*, on the ground that it has been passed without obtaining the mandatory approval of the competent authority i.e. the Director, Secondary Education, Education Department, Government of Bihar, Patna (Respondent no.3), as required under Section 18(3)(d) of ‘the 1981 Act’ as amended by ‘2011 Amendment Act’. The ‘Respondent-7 School’ has defended the impugned actions taken by it by filing a

detailed Counter Affidavit as well as in the Supplementary Counter Affidavit.

3. In the Supplementary Counter Affidavit filed by 'the Respondent-7 School', an objection has been raised with regard to the maintainability of the present writ petition. The specific objection as contained in paragraph-15 of the Supplementary Counter Affidavit is quoted herein below for needful:

> *"15. That it is relevant to state that the writ petition is not maintainable, as the order under challenge has been passed by a minority aided school in respect of a dispute arising out of an ordinary contract of service. Hence, the writ petition is liable to obe dismissed as not maintainable."*

4. It is thus the specific objection of the learned counsel appearing for 'Respondent-7 School' that since the impugned orders have been passed by a minority aided school in relation to a dispute arising out of an ordinary contract of service, therefore, the present writ application being one seeking enforecment of rights arising from such a contract, is not maintainable under Article 226 of the Constitution of India. In other words, no writ would lie to challenge the impugned orders arising out of an ordinary contrct of service.

5. Since an objection has been raised by 'the Respondent No.7 School' with regard to maintainability of the present writ

petition, therefore, the Court considers it appropriate to examine and determine the said issue before entering into the merits of the controversy. The parties have been heard at length. In support of the objection raised by 'the Respondent-7 School' regarding maintability of the present writ petition, the learned counsel for the school has relied upon the following decisions:

(i) **Shri Vidya Ram Misra v. Managing Committee, Shri Jai Narain College** *reported in* **(1972) 1 SCC 623;**

(ii) **Pradeep Kumar Biswas vs Indian Institute Of Chemical Biology & Ors.** *reported in* **(2002) 5 SCC 111;**

(iii) **Trigun Chand Thakur vs State of Bihar & Ors.** *reported in* **(2019) 7 SCC 513;**

(iv) **St. Mary's Education Society & Anr. Vs.Rajendra Prasad Bhargava & Ors.** *reported in* **(2023) 4 SCC 498;**

(v) **Army Welfare Education Society, New Delhi Vs. Sunil Kumar Sharma & Ors.** reported in **(2024) 16 SCC 598;**

(vi) **Dileep Kumar Pandey v. Union of India & Ors.** reported in **2025 Live Law (SC) 629.**

6. While referring to the judgement in **Shri Vidya Ram Misra case (Supra),** learned counsel for 'Respondent no.7

School' has specifically relied upon paragraphs- 4, 5, 11 and 13 of the said judgement, which are quoted herein below for needful:

> *"4. It is well settled that, when there is a purported termination of a contract of service, a declaration that the contract of service still subsisted would not be made in the absence of special circumstances, because of the principle that courts do not ordinarily enforce specific performance of contracts of service (see Executive Committee of U.P. State Warehousing Corporation Ltd. v. Chandra Kiran Tyagi [AIR 1970 SC 1244 : (1970) 2 SCR 250 : (1970) 1 SCJ 790] and Indian Airlines Corporation v. Sukhdeo Rai [AIR 1971 SC 1828]). If the master rightfully ends the contract, there can be no complaint. If the master wrongfully ends the contract, then the servant can pursue a claim for damages. So even if the master wrongfully dismisses the servant in breach of the contract, the employment is effectively terminated. In Ridge v. Baldwin [(1965) 2 WLR 935 (HL)] Lord Reid said in his speech:*
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> > *"The law regarding master and servant is not in doubt. There cannot be specific performance of a contract of service, and the master can terminate the contract with his servant at any time and for any reason or for none. But if he does so in a manner not warranted by the contract he must pay damages for breach of contract. So the question in a pure case of master and servant does not at all depend on whether the master has heard the servant in his own defence; it depends on whether the facts emerging at the trial prove breach of contract. But this kind of case can resemble dismissal from an office where the body employing the man is under some statutory or other restriction as to the kind of contract which it can make with its servants, or the grounds on which it can dismiss them."*
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> *5. A teacher appointed by a University constituted under a statute was held not to be holding an office or status in Vidyodaya University v. Silva [(1964) 3 All ER 865] . In that case the services of the respondent was brought to an end by a resolution of the University Council set up under the statute establishing the*

University. The resolution was admittedly passed without hearing the teacher. Under the statute, the Council was empowered to institute professorship and every appointment was to be by an agreement in writing between the University and the professor and was to be for such period and on such terms as the Council might resolve. Under Section 18(e) of the Act, the Council had the power to dismiss an officer or a teacher on grounds of incapacity or conduct which, in the opinion of not less than two-thirds of the members of the Council, rendered him unfit to be an officer or a teacher of the University. Such a resolution with the requisite majority was passed. The Act gave no right to the teacher of being heard by the Council. The Privy Council held that the mere circumstance that the University was established by the statute and was regulated by statutory enactments contained in the Act did not mean that the contracts of employment made with teachers, though subject to Section 18(e), were other than ordinary contracts of master and servant and, therefore, the procedure of being heard invoked by the respondent was not available to him and no writ could be issued against the University.

11. On a plain reading of Statute 151, it is clear that it only provides that the terms and conditions mentioned therein must be incorporated in the contract to be entered into between the college and the teacher 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 Statute 151 have proprio vigore 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.

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, 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 v. A.L. Pande, 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."

7. While referring to **Pradeep Kumar Biswas case (Supra),** reliance has been placed on paragraph-40 of the said judgement, which is quoted herein below for needful:

"40. The picture that ultimately emerges is that the tests formulated in Ajay Hasia [Ajay Hasia v. Khalid Mujib Sehravardi, (1981) 1 SCC 722 : 1981 SCC (L&S) 258] are not a rigid set of principles so that if a body falls within any one of them it must, ex hypothesi, be considered to be a State within the meaning of Article 12. The question in each case would be — whether in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under the control of the Government. Such control must be particular to the body in question and must be pervasive. If this is found then the body is a State within Article 12. On the other hand, when the control is merely regulatory whether under statute or otherwise, it would not serve to make the body a State."

8. While referring to **Trigun Chand Thakur case (Supra),** reliance has been placed on paragraph-5 of the said judgement, which is quoted herein below for needful:

"5. Being aggrieved, the appellant has filed LPA No. 670 of 1999 before the Division Bench of the High Court. The Division Bench vide impugned order dated 21-1-2008 [Trigun Chand Thakur v. State of Bihar, 2008 SCC OnLine Pat 994 : (2008) 2 PLJR 718] dismissed the LPA filed by the appellant and affirmed the order passed by the learned Single Judge. In the impugned order [Trigun Chand Thakur v. State of Bihar, 2008 SCC OnLine Pat 994 : (2008) 2 PLJR 718]

> *, the Division Bench of the High Court has also placed reliance Chandra Nath Thakur v. Bihar Sanskrit Shiksha Board [Chandra Nath Thakur v. Bihar Sanskrit Shiksha Board, 1999 SCC OnLine Pat 58 : (1999) 1 PLJR 529] and held that a teacher of a 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 Committee. The Division Bench also pointed out that the consent order passed by the High Court in Trigun Chander Thakur v. State of Bihar [Trigun Chander Thakur v. State of Bihar, CWJC No. 10968 of 1994, order dated 31-8-1995 (Pat)] cannot confer jurisdiction on this Court and does not make the Managing Committee "State" within the meaning of Article 12 of the Constitution of India."*

9. The judgement delivered by the Hon'ble Apex Court in **St. Mary's Education Society case (Supra),** has been relied upon by 'the Respondent-7 School' to establish the argument that the petitioner in this case is agitating against the suspension and termination orders passed by the managing committee, which as per him amounts to seeking enforcement of ordinary contract of service, which has no direct nexus to the "public function" or "public duty"- i.e. imparting of education being discharged by 'the Respondent-7 School', therefore, even if 'the Respondent-7 School' is performing "public duty" and is amenable to writ jurisdiction, its decision to terminate the ordinary contract of service of the petitioner, cannot be a subject matter of judicial review under writ jurisdiction because there is no public element in the action complained of. To emphasis this argument, reliance has been placed on paragraphs-43, 54, 66 and 75.2 of the

judgement delivered in **St. Mary's Education Society case (Supra),** which are quoted herein below for needful:

> *"43. 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.*
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> *54. 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.*
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> *66. 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.*
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> *75.2. 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.*

10. Referring to the judgement delivered in **Army Welfare Education Society, New Delhi case (Supra)** reliance has been placed on paragraph-57 of the said judgement which is quoted herein below for needful:

> *"57. In view of the aforesaid, nothing more is required to be discussed in the present appeals. We are of the view that the High Court committed an egregious error in entertaining the writ petition filed by the respondents herein holding that the appellant Society is "State" within Article 12 of the Constitution. Undoubtedly, the school run by the appellant Society imparts education. Imparting education involves public duty and therefore public law element could also be said to be involved. However, the relationship between the respondents herein and the appellant Society is that of an employee and a private employer arising out of a*

> *private contract. If there is a breach of a covenant of a private contract, the same does not touch any public law element. The school cannot be said to be discharging any public duty in connection with the employment of the respondents.*"

11. Referring to **Dileep Kumar Pandey case (Supra)** reliance has been placed on paragraphs 21 to 24 of the said judgement, which are quoted herein below for needful:

> *"21. When the plain language of Article 226 of the Constitution indicates a wider coverage, this Court would not accord a restrictive meaning thereto as Article 226(1) of the Constitution itself makes it clear that notwithstanding anything contained in Article 32 of the Constitution, every High Court shall have power throughout the territories in relation to which it exercises jurisdiction to issue to any person or authority including in appropriate cases, any Government within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them for the enforcement of any of the rights conferred by Part III and 'for any other purpose'. Thus, we have no hesitation to hold that the School/Committee is amenable to writ jurisdiction under Article 226 of the Constitution. It is also of some import to note that, at the time of recruitment of the teachers, the officers of the IAF are also part of the body which decides such recruitment, including interviews for the post of Principal, which would, once again, denote the pervasive control of the IAF in the running of the schools. As a matter of fact, the Court cannot shut its eyes to the claim made by the appellant in Civil Appeal No. 11378 of 2013 to the effect that all proceedings against him started when he objected to a candidate who was junior to him being made the in-21 of 28 charge Principal, the crucial aspect being that the said junior happened to be the sister of the Air Vice Marshal concerned, under whose jurisdiction the School was located. Of course, we may clarify that we are not returning any finding on this point. But, the direct influence of the*

officers of the IAF in the running of the schools under his/her command, including where his/her subordinates are directly responsible, would lead to the irresistible conclusion that the Committee/School cannot be held to fall outside the purview of Article 226 of the Constitution.

22. Another issue the learned ASG flagged is with regard to funds primarily used for running of the School being 'Non Public Funds'. In this context, it would be appropriate to reproduce the relevant extract from the IAF Manual of Management and Accounting of Non-Public Funds (IAP 3503 (COMPREHENSIVELY REVISED, 2016), produced as part of the written submissions on behalf of the Respondents:

> *'3. As fighting force it is important for the organization to maintain high motivation, morale and provide good quality of life for its Air warriors and their families. Authorization for incurring expenditure for Undertaking all welfare activities out of Public Funds being limited, the purpose of creating Non Public Funds, is to supplement the scope of Public Funds and to cater for welfare needs of troops which cannot be provided through Public Funds. The primary purpose for creating these Funds is the welfare of troops. The Govt of India has provided certain privileges to these funds by allowing some special provisions; Some of these are exemption of the income of these funds from income Tax, allowing use of certain Govt buildings for these ventures on payment of rent/allied charges wherever applicable, allowing the recovery of the dues of Non Public Funds from salary of individuals, making donations to certain NPFs tax free etc.'*
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> *(emphasis supplied)*

23. In view of the aforesaid, on a deeper probe, it appears that 'Non Public Funds' is a misnomer inasmuch as while it may not be labelled as 'Public Funds' but the nature is public for the reason that it includes direct funding from the Air Force Unit/Station and most importantly, it is also supplemented by the Regimental Fund. Another reason is that even the so-termed 'Non Public Funds' are used for welfare measures for the IAF personnel such as establishment of canteens etc. and are exempt from income tax and other statutory taxes, meaning that the Government

> *foregoes its share by way of taxes on such funds. Arguendo, if the funding is not direct, the indirect support of the Government of India/Ministry of Defence through providing land, granting tax exemptions et al is clearly borne out from the record.*
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> *24. At this juncture, we would like to refer the judgments cited by the learned ASG - Union of India v. Chotelal, (1999) 1 SCC 554 and R R Pillai v. Southern Air Command, Indian Air Force, (2009) 13 SCC 311. In our considered view, these judgments are not applicable and can be distinguished on facts. Chotelal (supra) dealt with the issue as to whether dhobis appointed to wash the clothes of the cadets at the National Defence Academy, Khadakwasla, who are paid from a fund called the 'Regimental Fund' can be said to be holders of civil posts so as to confer jurisdiction on the Central Administrative Tribunal, whereas R R Pillai (supra) dealt with the status of employees of an unit-run canteen in the armed forces. Thus, both relied on cases wherein controversy was pertaining to the status of the concerned employees, whereas herein the subject-matter is completely different, relating to the amenability of the School/Committee, while discharging a public function and performing a public duty, namely of imparting education and discharging public function, to writ jurisdiction under Article 226 of the Constitution. Quite perceptibly, even the terms and conditions of service and nature of duties considered in Chotelal (supra) and R R Pillai (supra) were very different."*

12. Responding to the submissions and arguments made by learned counsel for 'the Respondent-7 School', learned counsel appearing for the petitioner submits that in the present case, the actions complained of have been challenged on various grounds and one of the grounds being that the actions/decisions taken against the petitioner, required statutory

approval of Director of Secondary Education, Education Department, Government of Bihar as per the statutory provisions contained in 'the 1981 Act' as amended by '2011 Amendment Act', which was not done and hence, interference in this case was/is being sought on the ground of breach of law and not on the ground of breach of an ordinary contract of service. Therefore, as per the law well settled, this writ application is maintainable.

13. To fortify his submissions, the learned counsel for the petitioner has relied upon the following decisions:

(i) **Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others versus V.R. Rudani & Others,** reported in (1989) 2 SCC 691, Paragraph 15, 17, 20 and 22, which are quoted herein below for needful:

> *"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 institutions, therefore, is not devoid of any public character. So are rsity authorities. Employment in such 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, there-fore, 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.

17. There, however, the prerogative writ of mandamus is confined only to public authorities to compel performance of public duty. The 'public authority for them mean every body which is created by statute and whose powers and duties are defined by statute. So government departments, local authorities, police authorities, and statutory undertakings and corporations, are all 'public authorities'. But there is no such limitation for our High Courts to issue the writ 'in the nature of mandamus'. Article 226 confers wide powers on the High Courts to issue writs in the nature of prerogative writs. This is a striking departure from the English law. Under Article 226, writs can be issued to "any person or authority". It can be issued "for the enforcement of any of the fundamental rights and for any other purpose".

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 funda-mental 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.

22. Here again we may point out that mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute. Commenting on the development of this law, Professor de Smith states: "To be enforceable by mandamus a public duty does not necessarily have to be one imposed by statute. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract." We share this view. The judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into watertight compartment. It should remain flexible to meet the requirements of variable circumstances. 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. We, therefore, reject the contention urged for the appellants on the maintainability of the wrti petition."

(ii) **Ramkrishna Mission and Another versus Kago Kunya and others,** reported in **(2019) 16 SCC 303**, paragraph 34, which is quoted herein below for needul:

"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."

(iii) **Marwari Balika Vidyalaya versus Asha Srivastava and Ors., r**eported in (2020) 14 SCC 449. Paragraphs 13, 14, 15, 16, 21, 22, 23 and 24, which are quoted herein below for needful:

"13. In Raj Kumar v. Director of Education & Ors. (supra) this Court held that Section 8(2) of the Delhi School Education Act, 1973 is a procedural safeguard in favour of employee to ensure that order of termination or dismissal is not passed without prior approval of Director of Education to avoid arbitrary or unreasonable termination/dismissal of employee of even recognised private school. Moreover, this Court also considered the Objects and Reasons of the Delhi School Education Act, 1973 and came to the conclusion that the termination of service of the driver of a private school without obtaining prior approval of Director of Education was bad in law. This Court observed:

"45. We are unable to agree with the contention advanced by the learned counsel appearing on behalf of the respondent School. Section 8(2) of the DSE Act is a procedural safeguard in favour of an employee to ensure that order of termination or dismissal is not passed without the prior approval of the Director of Education. This is to avoid arbitrary or unreasonable termination or dismissal of an employee of a recognised private school."

14. This Court has laid down in Raj Kumar v. Director of Education & Ors. (supra) that the intent of

the legislature while enacting the Delhi School Education Act, 1973 (in short, 'the DSE') was to provide security of tenure to the employees of the school and to regulate the terms and conditions of their employment. While the functioning of both aided and unaided educational institutions must be free from unnecessary Governmental interference, the same needs to the reconciled with the conditions of employment of the employees of these institutions and provision of adequate precautions to safeguard their interests. Section 8(2) of the DSE Act is one such precautionary safeguard which needs to be followed to ensure that employees of educational institutions do not suffer unfair treatment at the hands of the management.

15. Writ application was clearly maintainable in view of aforesaid discussion and more so in view of the decision of this Court in Ramesh Ahluwalia v. State of Punjab & Ors. (supra) in which this court has considered the issue at length and has thus observed:

"13. in the aforesaid case, this Court was also considering a situation where the services of a Lecturer had been terminated who was working in the college run by the Andi Mukti Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust. In those circumstances, this Court has clearly observed as under: (V.R. Rudani case, SCC PP.700-701, paras 20 & 22) "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.

22. Here again, we may point out that mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the Statute.

Commenting on the development of this law, Professor de Smith states:'To be enforceable by mandamus a public duty does not necessarily have to be one imposed by statute. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract. We share this view. The judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into watertight compartment. It should remain flexible to meet the requirements of variable circumstances. 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. We, therefore, reject the contention urged for the appellant on the maintainability of the writ petition.

The aforesaid observations have been repeated and reiterated in numerous judgments of this Court including the judgments in Unni Krishnan and Zee Telefilms Ltd. brought to our notice by the learned counsel for the appellant Mr. Parikh.

14. In view of the law laid down in the aforementioned judgment of this Court, the judgment of the learned Single Judge as also the Division Bench of the High Court cannot be sustained on the proposition that the writ petition would not maintainable merely because the respondent institution is a purely unaided private educational institution. The appellant had specifically taken the plea that the respondents perform public functions i.e. providing education to children in their institutions throughout India.“ (emphasis supplied) It is apparent from the aforesaid decisions that the Writ Application is maintainable in such a matter even as against the private unaided educational institutions.

16. Learned Senior Counsel relied upon the decision of this Court in Committee of Management,

Delhi Public School & Anr. v. M.K. Gandhi & Ors. (supra) wherein the question of termination of services of teachers was involved. The Committee of Management filed a Civil Appeal in this Court against the decision of Allahabad High Court contending that the Delhi Public School, Ghaziabad was not a 'State' within the meaning of Article 12 of the Constitution. The question involved was that termination of service of teachers of a private school without conducting the enquiry was contrary to bye-laws. This Court held that the Writ Application was not maintainable as a private school is not 'State' under Article 12 of the Constitution. It is pertinent to mention here that the question of approval by Government authority was not involved in M.K. Gandhi (Supra). Thus, this decision is distinguishable.

21. In view of the aforesaid discussion, we have no hesitation to hold that the Writ Application is maintainable as rightly held by the Division Bench of the High Court.

22. Coming to the question of relief of reinstatement and back wages, in view of the factual matrix of the instant case, we have taken note of the fact that the approval of the concerned authorities was not obtained and stigmatic order of dismissal was passed in the most arbitrary manner. It is not in dispute that no departmental enquiry was held.

23. In the case of Anoop Jaiswal v. Government of India & Anr. (1984) 2 SCC 369, the appellant was undergoing training as a probationer. On a particular day, all the trainees arrived late at the place wherein P.T./unarmed combat practice was to be conducted. An enquiry was initiated and the impugned order of discharge under Rule 12(b) of the IPS (Probation) Rules, 1954 on the ground of his unsuitability for being a member of the IPS. It was held that the order was punitive in nature which in absence of any proper enquiry. It was held as under:

"13.....Even though the order of discharge may be non-committal, it cannot stand alone. Though the noting in the file of the Government may be irrelevant, the cause for the order cannot be ignored. The recommendation of the Director which is the basis of foundation for the

order should be read along with the order for the purpose of determining its true character. If on reading the two together the Court reaches the conclusion that the alleged act of misconduct was the cause of the order and that but for that incident it would not have been passed it is inevitable that the order of discharge should fall to the ground as the appellant has not been afforded a reasonable opportunity to defend himself as provided in Article 311(2) of the Constitution."

24. In the present case, the employee has served for five years before dismissal from the service by a stigmatic order, passed without holding an enquiry, we cannot entertain the submission raised by learned Senior counsel for the Appellant-School that back wages should be denied. The manner in which termination had been made was clearly arbitrary and the order was illegal and void and thus back wages should follow."

(iv) **St. Mary's Education Society and Another Versus Rajendra Prasad Bhargava and others**, reported in **(2023) 4 SCC 498**, Paragraphs 62, 64 and 75 to 75.5, which are quoted herein below for needful:

"62. We may say without any hesitation that Respondent 1 herein cannot press into service the dictum as laid down by this Court in Marwari Balika Vidyalaya [Marwari Balika Vidyalaya v. Asha Srivastava, (2020) 14 SCC 449 : (2021) 1 SCC (L&S) 854] as the said case is distinguishable. The most important distinguishing feature of Marwari Balika Vidyalaya [Marwari Balika Vidyalaya v. Asha Srivastava, (2020) 14 SCC 449 : (2021) 1 SCC (L&S) 854] 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 Respondent 1 herein.

64. In Marwari Balika Vidyalaya [Marwari Balika Vidyalaya v. Asha Srivastava, (2020) 14 SCC 449 : (2021) 1 SCC (L&S) 854] , 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.

75. We may sum up our final conclusions as under:

75.1. 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.

75.2. 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.

75.3. 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.

75.4. Even if it be perceived that imparting education by private unaided 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 with 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.

75.5. 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."

(v) **Shiv Shankar Singh Vs. The State of Bihar and others** vide judgement dated 08.05.2025 in **CWJC No.5476 of 2020,** paragraphs 25 to 28, 31 and 32, which are quoted herein below for needful:

"25. The Apex Court in the background of the fact that "in the State of Bihar, with objective, a number of private secondary schools were established and managed by private individuals or societies. The State considered it necessary to take over the management and control of Non-Government Secondary Schools for better organization and

development of secondary education of the State. It promulgated an Ordinance on August 11-08-80, as the Bihar Non-Government Secondary Schools (Taking Over of Management and Control) First Ordinance. The Ordinance was later on replaced by another Bihar Ordinance No. 74 of 1981 on 22-4-1981 and, thereafter, the Bihar Non-Government Secondary Schools (Taking Over of Management and Control) Act, 1981 (hereinafter referred to as the "Act, 1981") came into effect with an object for improvement, better organisation and development of Secondary Education in the State of Bihar". The Hon'ble Supreme Court after considering the provision of the Act and dealing with the provision of Section 18, held that "a minority school shall be accorded recognition if it is managed and controlled in accordance with the provision set out in Clause (a) and (k) of Section 18 (3)". It requires every minority secondary school to have a managing committee and written by-laws. The managing committee is required to appoint teachers with the concurrence of the School Service Board. The managing committee shall prescribe rules regarding the service conditions of teachers based on natural justice and prevailing law and it shall have powers to remove, dismiss, terminate or discharge a teacher from service with the approval of School Service Board. The managing committee shall charge only such fees from the students as are prescribed by the State Government. No higher fees shall be charged unless prior approval of the State Government is obtained.

26. The Apex Court further observed that "Clauses (j) and (k) of Section 18(3) confer power on the State Government to issue instructions consistent with the provisions of Articles 29 and 30 of the Constitution for efficient management and for improving the standard of teaching and a minority school is required to comply with those instructions.

Clauses (a) to (k) of Section 18(3) of the Act, lay down terms and conditions for granting recognition to a minority school, and these are regulatory in nature which seek to secure excellence in education and efficiency in management of schools.

27. The Apex Court in the aforesaid judgment has held that "the impugned Act does not violate petitioners' rights guaranteed under Article 30(1) of the Constitution of India." The vires of the Act was, thus, held to be valid in accordance with the Constitutional provisions.

*28. In the present case, the petitioner is aggrieved by the non payment of salary and with the termination order and the power of judicial review can be exercised against arbitrary action was considered by the Apex Court in the case of **St. Mary's Education Society (Supra)**, dealing with the said question relying on its earlier judgments, the Apex Court, in paragraph nos. 66, 67, 68, 69, 70 and 75 has held as follows:*

> *"**66.** 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.*
>
> ***67.** Our present judgment would remain incomplete if we fail to refer to the*

decision of this Court in Ramakrishna Mission v. Kago Kunya [Ramakrishna 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.

68. *Few relevant paragraphs of the said judgment are quoted as under for ready reference : (Ramakrishna Mission case [Ramakrishna Mission v. Kago Kunya, (2019) 16 SCC 303] , SCC pp. 309-11 & 313, paras 17-22 & 25-26)*

"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. (emphasis supplied)

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 : AIR 1989 SC 1607] . Andi Mukta [Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani, (1989) 2 SCC 691 : AIR 1989 SC 1607] 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.

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 : AIR 1989 SC 1607] , 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.’ ” (emphasis in original)

69. *The aforesaid decision of this Court in Ramakrishna Mission [Ramakrishna Mission v. Kago Kunya, (2019) 16 SCC 303] came to be considered exhaustively by a Full Bench of the High Court of Allahabad in Uttam Chand Rawat v. State of U.P. [Uttam Chand Rawat v. State of U.P., 2021 SCC OnLine All 724 : (2021) 6 All LJ 393] , wherein the Full Bench was called upon to answer the following question : (Uttam Chand Rawat case [Uttam Chand Rawat v. State of U.P., 2021 SCC OnLine All 724 : (2021) 6 All LJ 393] , SCC OnLine All para 1)*

"1. ...'(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?"

70. *The Full Bench proceeded to answer the aforesaid question as under : (Uttam Chand Rawat case [Uttam Chand Rawat v. State of U.P., 2021 SCC OnLine All 724 : (2021) 6 All LJ 393] , SCC OnLine All paras 16-20)*

"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 Supreme Court in Ramakrishna Mission [Ramakrishna Mission v. Kago Kunya, (2019) 16 SCC 303] 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. (emphasis supplied)

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 be 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)

***75.** We may sum up our final conclusions as under:*

***75.1.** 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.

75.2. *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.*

75.3. *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.*

75.4. *Even if it be perceived that imparting education by private unaided 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 with 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.

75.5. *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."*

31. Tested on the aforesaid principles of law laid down by the Apex Court, it is clear that the action of the Managing Committee, who have appointed the petitioner on the vacant sanctioned post and had sought approval from the Director, Secondary Education. The approval was pending and the respondents, without any valid reason and without giving due opportunity of hearing to the petitioner in accordance with the mandate of Article 311 (2) of the Constitution of India had terminated the petitioner. If the management of the school allow the petitioner to join after having validly appointed him and continued him in anticipation of approval, the reason assigned in the impugned order of termination without being approved by the Director, Secondary Education, shows malicious motive of the Managing Committee of the school. The action of the respondent can only be said to be a malicious act and such act cannot be described as a proper exercise of discretion and the order of termination clearly can be said to be without authority of law.

> *32. In above background, I hold that the termination order dated 17.05.2018, which has been brought on record by way of 'Annexure-E' to the counter affidavit filed on behalf of the respondents no. 6 and 7 in exercise of the power of Managing Committee in accordance with the School of Art Diosis of Patna to which the respondents no. 6 and 7 school namely, St. Joseph Convent High School, Barh is controlled cannot be sustained, and the same is hereby set aside and quashed.*

14. Taking note of the precise nature of objection raised by the Respondent no. 7-School and the submissions advanced on behalf of the parties, the question that arises for consideration is:

Whether a writ petition would be maintainable at the behest of a dismissed/terminated employee against a school discharging "public function" or "public duty", if the action complained of, on an amongst other grounds is also assailed *inter alia* on the ground of breach of law/statutory provision governing the service condition of such an employee?

15. From the averments/pleadings made in the writ petition and in the interlocutory application, it transpires that, apart from various other grounds, the petitioner has challenged both the suspension and dismissal order on the specific ground that they have been passed without taking approval of the competent government authority, which, as per the petitioner, was/is a mandatory requirement under the statutory provisions of 'the 1981 Act' as amended by '2011 Amendment Act'. It is further the specific case of the petitioner that the service rules governing the teachers

and non-teaching staffs of Respondent no. 7-School have been formulated in terms of the provisions of ‘the 1981 Act’ and the Director, Secondary Education (respondent no.3) exercises the regulatory control over the affairs of the minority school and disciplinary control over the teaching and non-teaching staffs of the school. Their appointments are also subjected to approval by the competent authority of the State Government, in accordance with the provisions of ‘the 1981 Act’.

16. These aforesiad factual assertions facts have not been specifically controverted in the Counter Affidavit filed by ‘the respondent no.7 School’. In the Supplementary Counter Affidavit, apart from stating that the suspension order was approved by District Education Officer vide Letter dated 11.06.2024, though no document evidencing such approval has been brought on record, no denial has been made to the petitioner’s categorical assertion that the dismissal order has been passed without seeking the approval of the competent government authority. It is also pertinent to note that although an objection has been raised by ‘the Respondent-7 School’ stating that writ would not be maintainable in respect of a dispute arising out of oridinary contract of service, but no submission has been made to explain as to why a writ would not be maintainable when the challenge is founded not merely on the breach of contract of service, but also on the alleged violation of statutory provisions governing the petitioner’s service conditions.

17. In the aforesaid factual backdrop and the submissions made by the parties, this Court proceeds to examine the judgements relied upon by the parties, in the context of the specific objection raised by 'Respondent-7 School' regarding maintainability of the writ petition.

18. The judgement of the Hon'ble Supreme Court delivered in **Shri Vidya Ram Misra case (Supra)** would not apply to the factual matrix of this case, for the reason that in that case, the cause of action arose solely on account of breach of clause-5 of the contract of service entered between the petitioner therein and the Associated College and not on account of any breach of law/statutory provision. The governing statute 151,152 and 153 framed under the Lucknow University Act, 1920 did not lay down any procedure for removal of a teacher to be incorporated in the contract of service, therefore, clause-5 of the contract of service stood alone as part of ordinary contract of service, bereft of any statutory flavour. Hence, for breach of clause-5 of contract, the remedy lay before Civil Court by way of suit for damages/compensation. The writ petition was, therefore, rightly held to be not maintainable because writ courts do not ordinarily enforce specific performance of contract of service. Paragraphs-10 and 11 of the judgement in **Shri Vidya Ram Misra case (Supra)** succinctly explains this position, which are quoted herein below for needful:

> "*10. In the case in hand, the position is entirely different. The relevant statutes governing this case are Statutes 151, 152 and 153, framed under the provisions of the Lucknow University Act, 1920. Statute 151 provides that teachers of an Associated College including the*

principal shall be appointed on written contract and that the contract shall inter alia provide the conditions mentioned therein in addition to such other conditions not inconsistent with the Act and the Statutes as an Associated College may include in its own form of agreement. Then the conditions as regards salary, age of retirement etc., are enumerated. The statute then goes on to specify the grounds on which a teacher's services can be terminated. Statute 152 states that the form of agreement to be adopted by each college shall be approved by the Executive Council before it is put in force. Statute 153 provides for a form of agreement which shall serve as a model. It may be noted that Statute 151 does 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 lay down any particular procedure for that purpose. The appellant had entered into an agreement when he was employed in the college. Clause 5 of the agreement provided that:

"the period of probation shall be one year unless extended by the Managing Committee and the College may at any time during the said period of probation put an end to this engagement, or if service shall continue beyond the said term, at any time thereafter, dispense with the services of the said Lecturer without notice, if the Managing Committee of the said College is satisfied that it is necessary to remove the said Lecturer for misconduct, insubordination or habitual neglect of duty on the part of the said Lecturer or in case any of the conditions herein specified have been broken by the said Lecturer provided that an opportunity is given to him by the said Managing Committee to give his explanation before a decision is arrived at.

11. On a plain reading of Statute 151, it is clear that it only provides that the terms and conditions mentioned therein must be incorporated in the contract to be entered into between the college and the teacher 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 Statute 151 have proprio vigore 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."

19. The judgement of the Hon'ble Supreme Court delivered in the case of **Pradeep Kumar Biswas case (Supra)** also has no application to the precise nature of the objection raised by 'the Respondent-7 School' in this case, for the reason that the judgement in **Pradeep Kumar Biswas case (Supra)** is an authority on the proposition as to when a body can be held to be a "State" within Article 12 of the Constitution of India and when it cannot. In this regard paragraph-40 of the said judgment is quoted herein below for needful:

> *"40. The picture that ultimately emerges is that the tests formulated in Ajay Hasia [Ajay Hasia v. Khalid Mujib Sehravardi, (1981) 1 SCC 722 : 1981 SCC (L&S) 258] are not a rigid set of principles so that if a body falls within any one of them it must, ex hypothesi, be considered to be a State within the meaning of Article 12. The question in each case would be — whether in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under the control of the Government. Such control must be particular to the body in question and must be pervasive. If this is found then the body is a State within Article 12. On the other hand, when the control is merely regulatory whether under statute or otherwise, it would not serve to make the body a State."*

Since in this case, the objection of 'Respondent-7 School' is not that the School is not a "State" within Article 12, rather the precise objection is that writ cannot be maintained for a dispute arising out of ordinary contract of service, therefore, this judgement in **Pradeep Kumar Biswas case (Supra)** will not have any application to the precise nature of objection raised in this case.

20. The reliance placed by learned counsel appearing for ‘Respondent-7 School’ on the judgement of the Hon’ble Supreme Court delivered in **Trigun Chand Thakur case (Supra)** is also misplaced and it will have no application to the precise nature of the objection raised by ‘the Respondent-7 School’ in this case, because in this judgment the Hon’ble Supreme Court found no reason to take a different view than the Division Bench of Patna High Court which, after placing reliance on another Division Bench judgment of the same High Court reported in **1999 (1) PLJR 529 (Chandra Nath Thakur & Ors. vs. Bihar Sanskrit Shiksha Board)**, held that teacher of a privately managed school, even though, financially aided by the State Government or by Sanskrit Shiksha Board, cannot maintain a writ petition against an order of termination from service passed by the Managing Committee because the Managing Committee in the facts of that case was not a “State” within the meaning of Article 12 of the Constitution of India.

Again, the objection taken by ‘Respondent-7 School’ in this case is not that the ‘Respondent-7 School’ is not a “State” within Article 12, rather the precise objection is that writ cannot be maintained for a dispute arising out of ordinary contract of service. Therefore, the reliance placed on the judgement delivered in **Trigun Chand Thakur** case has no application to the precise nature of objection taken by ‘Respondent-7 School’ in paragraph-15 of its Supplementary Counter Affidavit.

21. The judgement delivered by the Hon'ble Supreme Court in **St. Mary's Education Society** case (Supra) also does not come to the rescue of 'Respondent-7 School'. In fact, the findings given in the said judgement helps the petitioner to maintain this writ petition.

This judgement has been relied upon by 'Respondent-7 School' to establish the argument that the petitioner in this case is agitating against the termination order passed by the Managing Committee, which as per the learned counsel for 'Respondent-7 School', amounts to seeking enforcement of ordinary contract of service, which has no direct nexus to the "public function" or "public duty" – i.e. imparting of education being discharged by 'the Respondent-7 School', therefore, even if 'the Respondent no.7 School' performing "public duty" is amenable to writ jurisdiction, its decision to terminate an ordinary contract of service of the petitioner, cannot be a subject matter of judicial review under writ jurisdiction because there is no public element in the action complained of. The relevant paragraphs of this judgement on which reliance has been placed have already been quoted herein above for ready reference.

In the writ application and in the interlocutory application, the suspension order and the dismissal order, on an amongst other grounds have also been challenged on the ground of lack of approval by the competent government official/authority, which is stated to be required as per the statutory provisions of 'the 1981 Act' as amended by '2011

Amendment Act'. Specific pleading to this effet has been made in Ground-(e) and paragraph-3 of the writ petition, which is quoted herein below for needful:

> ***"(e)*** *For that till date suspension order has not been approved by the competent government officials.*
>
> *3. That at the outset it is relevant to state that the issue involved in the present writ application primarily relates to the powers of the Secretary of the Managing Committee of a minority aided school in a matters pertaining to the suspension of teaching staff viz whether the Secretary of the Managing Committee of a school has the jurisdiction to suspend a teacher without the Managing Committee's approval; whether such a suspension order is enforceable in absence of approval by the competent authority; whether Secretary of Managing committee has a power to suspend teaching staffs of school in the absence of any such rules vesting the power to suspend; whether a suspension order passed without fixation or payment of subsistence allowance is legally valid; whether suspension can be a mode of punishment; whether suspension can be done for an indefinite period and that too without initiating any disciplinary proceeding. The next issue is whether the Secretary can lawfully withhold a teacher's salary in absence of any rules empowering the Secretary to pass such orders."*

Specific pleading is also contained in paragraph-22 and 23 of the interlocutory application, which are quoted herein below for needful:

> *"22. That it is humbly submitted that the order of dismissal dated 10.01.2026 is bad in law as it was passed by the Secretary of the Managing Committee without approval from the competent authority.*

> *23. That it would be relevant to refer para 40 of the writ application to humbly submit that Director(Secondary Education), Education Department, Government of Bihar is having a disciplinary control over the staff of minority school including teachers and so before dismissing petitioner necessary approval from said authority has to be taken but in the present case petitioner has been dismissed in absence of any approval from said authority. Hence, the order of dismissal of petitioner is bad in the eyes of law.It would further relevant to state that even after passing the order of impugn dismissal order the Secretary of Managing Committee has not sought any approval from the said authority."*

From the aforesaid pleadings made by the petitioner, it is clear that case of violation of statutory provisions governing the service condition is being sought to be agitated in the writ petition, which would be permissible against 'the Respondent-7 School' discharging "public function" or "public duty" - i.e. imparting education, even if the action complained of has no direct nexus to the discharge of "public duty". This aspect of the law is very well settled and has been reiterated in **St. Mary's Education Society case (Supra)** in paragraph 75.4, which is quoted herein below for needful:

> *"75.4. Even if it be perceived that imparting education by private unaided 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 with 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."*

In the present case also, the action complained of, as per the petitioner, required approval of Director, Secondary Education as per the statutory provisions contained in 'the 1981 Act', which was not done, therefore, interference in this case is being sought on the ground of breach of law and not on the basis of interference in discharge of "public duty", thus not requiring the petitioner to establish direct nexus between action complained of and "public duty" being discharged by 'the Respondent-7 School'.

It is on the strength of the above reasoning that the Hon'ble Supreme Court in **St. Mary's Education Society case (Supra),** in paragraphs 62 and 64, with approval referred to the case of **Marwari Balika Vidyalaya** reported in **(2020) 14 SCC 449**. Paragraphs 62 and 64 of **St. Mary's Education Society case (Supra)** are quoted herein below for ready reference:

> **"***62. We may say without any hesitation that Respondent 1 herein cannot press into service the dictum as laid down by this Court in Marwari Balika Vidyalaya [Marwari Balika Vidyalaya v. Asha Srivastava, (2020) 14 SCC 449 : (2021) 1 SCC (L&S) 854] as the said case is distinguishable. The most important distinguishing feature of Marwari Balika Vidyalaya [Marwari Balika Vidyalaya v. Asha*

> *Srivastava, (2020) 14 SCC 449 : (2021) 1 SCC (L&S) 854] 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 Respondent 1 herein.*
>
> *64. In Marwari Balika Vidyalaya [Marwari Balika Vidyalaya v. Asha Srivastava, (2020) 14 SCC 449 : (2021) 1 SCC (L&S) 854] , 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."*

Thus, where violation of statutory provision by a body discharging "public function" or "public duty" is complained of, the same would not come within the realm of private element, requiring direct nexus to be established between action complained of and the discharge of "public duty" by the body.

22. Even in **Shri Vidya Ram Misra case (Supra),** the Hon'ble Supreme Court upheld non-maintainability of writ petition because it was seeking interference not on the ground of breach of law but only on the breah of ordinary contract of service, thereby firmly entrenching the law that writ would be maintainable if interference is sought on the ground of breach of statutory provision/law governing the subject.

23. In **Ramakrishna Mission case (2019) 16 SCC 303** also, the Hon'ble Supreme Court reiterated that contracts of a purely private nature would not be subject to writ jurisdiction, but carved out an exception to this principle by holding that if in a situation whether the contract of service is governed or regulated by statutory provisions (like the provisions of '1981 Act' in the present case) then writ would lie. Paragraph-34 of the said judgement is reproduced herein below for this purpose:

> *"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."*

24. The reliance placed on **Army Welfare Education Society, New Delhi case (Supra)** is also of no avail to 'the respondent-7 School' because in paragraph-54 of the said judgement, the Hon'ble Supreme Court has merely reiterated the long standing view that even if the school is discharging "public duty" by imparting education, the dispute arising out of breach of a covenant of a private contract of service would not be amenable to judicial review in writ jurisdiction, as the same does not touch any public

law element. This judgement does not in any manner dilute or militate against the well settled proposition of law that writ would lie for actions complained of on the ground of breach of law and not for breach of a covenant of contract of service, and that such actions when challenged will not come within the realm of privatre element (reference may be made to paragraphs 62 and 64 of **St. Mary's Education Society** case). Therefore, this judgement has no application to the factual context of the present case, where the actions of the respondent school of suspension and dismissal from service have also been challenged for allegedly violating the statutory provisions requiring the approval of competent State Government official/authority as per '1981 Act', thus alleging breach of law and not breach of a covenant of contract of service.

25. The judgement of the Hon'ble Supreme Court in **Dileep Kumar Pandey case (Supra)** also does not help 'the Respondent-7 School' in maintaining its objection. In the said case, the school was held to be not a "State" within the meaning of Article 12 for the reason as explained in paragraph-22 of the said judgement and further in paragraph-23 it was held and observed that the employees of the said school were not governed by any statutory provision and therefore, the relationship between the employees and the school fell in the realm of private contract, the breach of which involved no public law element, therefore, the view of Division

Bench of Allahabad High Court was upheld and the writ was held to be not maintainable.

Again this judgement in **Dileep Kumar Pandey case (Supra)** does not in any manner dilute or militate against the well settled proposition of law that writ would lie for action complained of on the ground of breach of law and not for breach of an ordinary contract of service, and that such actions when challenged will not come within the realm of private element. This judgement, therefore, also has no relevance to the factual matrix of the present case, where the actions of 'the Respondent-7 School' have also been challenged on the ground of violating the statutory provisions of '1981 Act', requiring approval.

26. Thus, for the reasons as explained herein above, this Court rejects the objection raised by 'the Respondent no.7 School' regarding maintainability of the writ petition and holds that since in the present writ application, the actions complained of, on an amongst other grounds have also been assailed on the ground of breach of statutory provisions contained in '1981 Act' as amended by '2011 Amendment Act', therefore, this writ application is held to be maintainable for the present against 'the Respondent No.7 School' which is undisputedly discharging 'public function' or 'public duty' by imparting education. It is made clear that while prosecuting the case on merit, the petitioner will be allowed to assail the impugned orders strictly on the ground of alleged breach of statutory

provisions of ‘1981 Act’ as amended by ‘2011 Amendment Act’ and on no other ground(s). It remains to be seen whether the petitioner while arguing the case on merit is able to establish the breach of statutory provision, as alleged by him or not. If the petitioner is unable to, then this Court may not finally entertain this writ application.

27. Put up this case after two weeks on 20.07.2026 under ‘Order on Petition’ for disposal of I.A.No.01 of 2026. In the meantime, the respondent parties may file their respective replies to the interlocturoy application.

(Alok Kumar Sinha, J)

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AFR/NAFR	AFR
CAV DATE	30.06.2026.
Uploading Date	02.07.2026.
Transmission Date	