

CM-928-LPA-2024 in/and LPA-328-2021,
CWP No. 6875 of 2022, and CWP No. 6917 of 2022

Simran Kaur versus Union of India and others

Present: Mr. R. K. Arora, Advocate, for the applicant-appellant.

Mr. Raman Garg, Mr. Mayank Garg and
Ms. Pallavi Gujral, Advocates, for respondent nos. 2 and 3
In LPA No. 328 of 2021.

Mr. D. S. Gill, Advocate for
Mr. R. S. Bajaj, Advocate, for respondent no. 4
In CWP No. 6917 of 2022.

Learned counsel for the appellant submits that writ petition would be maintainable against the Army Public School. In support of his submissions, learned counsel for the appellant has relied on **Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and others vs V. R. Rudani and others** 1989 (2) SCC 691, wherein it was held that any person or authority performing public duty like imparting education and thereby owing positive obligation to the society in general and people of India would be amenable to writ jurisdiction. The institutes imparting education such as Army Public School are duly recognized by Central Board of Education and governed by its directions, hence, as it performs functions of the State, it would be amenable to writ jurisdiction.

2. An onerous task has been placed before us as we find that the question has been answered differently by this Court of same strength.

3. A Division Bench of this Court in LPA No. 1476 of 2023 **Reena Panta vs Union of India and others** and connected LPA No. 98 of 2004, decided on 12.01.2024, by following judgments passed by Madras High Court in Writ Petition No. 1422 of 2022 **Mrs. Revathi vs Central Board of Secondary**

Education and others decided on 18.07.2023, Delhi High Court in LPA No. 223 of 2015 **Army Welfare Education Society vs Manju Nautiyal and another,** Rajasthan High Court in **Smt. Geeta Sharma vs Union of India and others** 2001 (2) Rajasthan LR 349 and Hon'ble the Supreme Court in Special Leave to Appeal (C) No. 7994 of 2022 **Urmila Chauhan vs The Chairman, Army Public School and others** decided on 26.09.2023, held as under:-

“9. Keeping in view the judgments passed in **Urmila Chauhan; Mrs. Revathi; and Smt. Geeta Sharma's** cases (*supra*), it is held that the Army Public Schools are amenable to writ jurisdiction. The Army Public Schools are directly and substantially part of the Indian Army. Therefore, they are authority within the meaning of Article 12 of the Constitution of India. Hence, the Army Public School is amenable to the writ jurisdiction. Moreover, this issue has already attained finality up to Hon'ble the Supreme Court.

10. In view of the above discussion, impugned judgments dated 11.09.2023 and 19.12.2023 are set aside. Consequently, the matter is remanded to the learned Single Judge to decide the same afresh on merits in accordance with law without going in to the issue of maintainability.”

4. Per contra, learned counsel appearing on behalf of the Army School has taken this Court to the orders passed by a Division Bench of this Court in **Hem Chand vs Union of India and others** 2003 (4) SLR 787 wherein it was held as under:-

“... The High Court of Jammu and Kashmir in Asha Khosa's case (*supra*) considered the legal question which was formulated as follows:—

“Whether or not the Army Welfare Education society is an instrumentality of the State in terms of Article 12 of the Constitution of India.?”

In that case, the petitioner had been appointed as Principal, Army Public School, Udhampur. In her appointment order it was

mentioned that her services would be governed by rule known as Army Welfare Education Society Rules'. Her services were terminated as the same were no longer required. The petitioner had challenged the aforesaid order of termination. The respondents had taken a preliminary objection to the effect that the School did not fall within the term 'State' or 'other authority' as defined under Article 12 of the Constitution of India. After elaborate discussion, the Division Bench of Jammu and Kashmir High Court has come to the conclusion that the Army Welfare Education Society is not an instrumentality of the State under Article 12 of the Constitution of India. Thereafter, the petitioner filed Special Leave Petition in the Supreme Court, which, as noticed earlier, was dismissed on 31.3.1997. Relying on the aforesaid judgment of the High Court of Jammu and Kashmir, this Court has also come to the same conclusion in Gurwinder Kaur's case (supra). In that case, the petitioner had been appointed as 'Dorm Attendant' in an Army School. Her services were terminated. She had challenged the order of termination. A Division Bench of this Court relying on the judgment of the High Court of Jammu and Kashmir in the case of Asha Kosha (supra) came to conclusion that the writ petition would not be maintainable against the School.

We find force in the submissions made by Mr. Gurpreet Singh, learned counsel for the respondents. This Court is bound by the earlier decision rendered by the Division Bench in Gurwinder Kaur's case (supra).

We have not been persuaded by the counsel for the petitioner to take a view different from the view taken by the two Division Benches in the cases of Asha Kosha and Gurwinder Kaur (supra).

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We have already held above that the Respondent is not an instrumentality of the "State" as defined under Article 12 of the Constitution of India. It is a purely private body. No statutory duty has been imposed on the respondent-Society which is registered under the Societies Registration Act, 1860. The "establishment" has been defined in Section 2 (k) of the Act which is as under:—

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(k) “establishment” means a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a local authority or a Government company as defined in Section 617 of the Companies Act 1956 (1 of 1956) and includes Departments of a Government;”

A perusal of the aforesaid Section would clearly show that the respondent-Society would not fall within the ambit of the same. The respondent is a society registered under the Societies Registration Act, 1860. The Government exercises absolutely no control in the management of the Society. It is not a company which would fall within Section 617 of the Companies Act, 1956. In view of Section 47 of the Act, the protection under this Section would not be available to the petitioner. The respondents have not acted in breach of any statutory rule.”

5. Same Division Bench of this Court in **Ram Lubhai vs The Secretary, Ministry of Defence, Government of India and others** 2003 (4) SLR 784, held as under:-

“5. We have anxiously considered the submissions made by the learned counsel for the parties. We are unable to agree with the learned counsel for the petitioner. The High Court of Jammu and Kashmir in Asha Khosa's case (supra) considered the legal question which was formulated as follows:—

“Whether or not the Army Welfare Education Society is an instrumentality of the State in terms of Article 12 of the Constitution of India.?”

In that case, the petitioner had been appointed as Principal, Army Public School, Udampur. In her appointment order it was mentioned that her services would be governed by rules known as ‘Army Welfare Education Society Rules.’ Her services were terminated as the same were no longer required. The petitioner had challenged the aforesaid order of termination. The respondents had taken a preliminary objection to the effect that the School did not fall within the term

‘State’ or ‘other authority’ as defined under Article 12 of the Constitution of India. After elaborate discussion, the Division Bench of Jammu and Kashmir High Court has come to the conclusion that the Army Welfare Education Society is not an instrumentality of the State under Article 12 of the Constitution of India. Thereafter, the petitioner filed Special Leave Petition in the Supreme Court, which, as noticed earlier, was dismissed on 31.3.1997. Relying on the aforesaid judgment of the High Court of Jammu and Kashmir, this Court has also come to the same conclusion in Gurwinder Kaur's case (supra). In that case, the petitioner had been appointed as ‘Dorm Attendant’ in an Army School. Her services were terminated. She had challenged the order of termination. A Division Bench of this Court relying on the judgment of the High Court of Jammu and Kashmir in the case of Asha Khosa (supra) came to conclusion that the writ petition would not be maintainable against the School.”

6. It followed the earlier decisions rendered by Division Bench of this Court in CWP No. 14993 of 2000 **Gurwinder Kaur vs Union of India and others** decided on 29.05.2001. In **Gurwinder Kaur**'s case (supra), similar view was taken by the Division Bench of this Court as in **Ram Lubhai**'s case (supra). Both the judgments in **Hem Chand** and **Ram Lubhai** were passed by same Division Bench in 2003.

7. In **Rajni Jaiswal vs School Managing Committee, Army School, Ferozepur Cantt and another** 2007 (3) SLR 753, judgments passed in earlier cases were followed and the writ petition was held to be not maintainable against the Army School or its Managing Committee.

8. Another judgment in CWP No. 6834 of 1996_ **Mrs. Sudha Soin vs Union of India and others** decided on 20.02.2009, wherein a Single Bench of this Court took a view following the Division Bench held the writ petition being not maintainable.

9. In **1997 (3) SCT 210**, a Full Bench of this Court held that writ petition is maintainable against even minority institutions, unaided institutions for education which have been performing public duties.

10. In the case of **Mohit Garg vs Army Institute of Law, Patiala** 2000 (4) SCT 380, a Division Bench of this High Court held as under:-

*“6. Before concluding, we may deal with the preliminary objection raised by the respondent. As already observed, it was contended that no writ petition was maintainable against the respondent as it is being run by a society which is not a State. This question need not detain us for long as the same stands answered by a Full Bench of five Judges of this court in **Ravneet Kaur v. The Christian Medical College, Ludhiana, 1997(3) SCT 210**. In this case also, the question arose whether a writ petition was maintainable against an unaided private medical college which was affiliated to a University. A Full Bench of this Court considered this matter in *Gurpreet Singh v. Punjab University, Chandigarh, 1983(85) PLR 46* and the question was answered in the negative. The correctness of this view was doubted and the matter was referred to a larger Bench. The larger Bench decided the question in the affirmative and over-ruled the earlier view of the Full Bench in *Gurpreet Singh's case (supra)*, it being held that writ or a direction could issue against a body performing a public duty as in the instant case. AIL is performing a public duty in providing legal education. In view of this binding precedent of our own Court, it is not necessary to discuss the cases cited by the counsel for the respondent.”*

11. Hon’ble the Supreme Court in the case of **State of Tripura vs Tripura Bar Association and others** 1998 (5) SCC 637, held as under:-

3. In the impugned judgment, the High Court has, however, gone into the question of inter se seniority of the Judicial

Officers who were impleaded as respondents in the writ petition. The said matter of inter se seniority had earlier been considered by a Division Bench of the same High Court in the case of Durgadas Purkayastha v. Hon'ble Gauhati High Court, (1988) 1 Gau LR 6 in respect of the same officers which judgment has become final. In the impugned judgment the Division Bench of the High Court has taken a view different from that taken in the earlier judgment in the case of Durgadas Purkayasiha.

4. *We are of the view that the Division Bench of the High Court which has delivered the impugned judgment being a coordinate Bench could not have taken a view different from that taken by the earlier Division Bench of the High Court in the case of Durgadas Purkayastha (Supra). If the latter Bench wanted to take a view different than that taken by the earlier Bench, the proper course for them would have been to refer the matter to a larger Bench. We have perused the reasons given by the learned Judges for not referring the matter to a larger Bench. We are not satisfied that the said reasons justified their deciding the matter and not referring it to the larger Bench. In the circumstances, we are unable to uphold the impugned judgment of the High Court insofar as it relates to the matter of inter se seniority of the Judicial Officers impleaded as respondents in the writ petition. The impugned judgment of the High Court insofar as it relates to the matter of seniority of the respondent Judicial Officers is set aside.”*

12. In **Official Liquidator vs Dayanand** 2008 (10) SCC 1, Hon'ble the Supreme Court has held as under:-

“90. We are distressed to note that despite several pronouncements on the subject, there is substantial increase in the number of cases involving violation of the basics of judicial discipline. The learned Single Judges and Benches of the High Courts refuse to follow and accept the verdict and law laid down by coordinate and even larger Benches by citing minor

difference in the facts as the ground for doing so. Therefore, it has become necessary to reiterate that disrespect to the constitutional ethos and breach of discipline have grave impact on the credibility of judicial institution and encourages chance litigation. It must be remembered that predictability and certainty is an important hallmark of judicial jurisprudence developed in this country in the last six decades and increase in the frequency of conflicting judgments of the superior judiciary will do incalculable harm to the system inasmuch as the courts at the grass roots will not be able to decide as to which of the judgments lay down the correct law and which one should be followed.”

13. We also find that different Courts have taken different views in relation to Army Public School. In **Bineeta Patnaik Padhi vs Union of India and others** 2021 (2) ESC 556, Calcutta High Court has held that private unaided educational Schools discharging public duty under RTE Act is amenable to Court’s writ jurisdiction under Article 226 of the Constitution of India and Army Schools were held to be amenable to writ jurisdiction.

14. The question with regard to maintainability of writ petition was dealt with by a Five Judges Bench of Hon’ble the Supreme Court in **Dwarka Nath vs Income Tax Officer, Special Circle, D Ward, Kapur and another** 1966 AIR (SC) 81, wherein it has been observed as under:-

“4. We shall first take the preliminary objection, for if we maintain it, no other question will arise for consideration. Article 226 of the Constitution reads :

“... every High Court shall have power, throughout the territories in relation to which it exercise 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.”

This article is couched in comprehensive phraseology and it ex facie confers a wide power on the high court to reach injustice wherever it is found. The constitution designedly used a wide language in

*describing the nature of the power, the purposes for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs also is widened by the use of the expression "nature", for the said expression does not equate the writs that can be issued in India with the those in England, but only draws in analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High Courts to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under article 226 of the Constitution with that of the English courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of Government to a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the article itself. To say this is not to say that the High Courts can function arbitrarily under this Article. Some limitations are implicit in the article and others may be evolved to direct the article through defined channels. This interpretation has been accepted by this Court in *Irani v. State of Madras* 1962 (2) SCR 169.”.*

15. Question regarding maintainability of writ petition has been considered by a Seven Judges Bench in **Pardeep Kumar Biswas vs Indian Institute of Chemical Biology and others** 2005 (4) SCC 691.

16. In **State of Punjab vs Devans Modern Breweries Limited** 2004 (11) SCC 26, a Division Bench of this Court held as under:-

“339. Judicial discipline envisages that a coordinate bench follow the decision of earlier coordinate bench. If a coordinate bench does not agree with the principles of law enunciated by another bench, the matter may be referred only to a larger bench.”

17. The language of the Article 226 of the Constitution of India empowers the High Court to issue a writ, order or direction to any person or authority, including any Government for the enforcement of any of the rights conferred by Part III or for any other purpose. Thus, *prima facie*, this Court is of the view that the definition of the State and its authorities under Article 12 of the Constitution of India would not limit the powers of this Court to issue writ against an institution like Army Public School which is performing public functions and is recognized by the Board.

18. In view of diametrically opposite, contrary and conflicting views expressed by different Benches of the same strength and our *prima facie* view, we deem it appropriate to refer the following issue to a Larger Bench:-

“Whether a writ petition under Article 226 of the Constitution of India would be maintainable by employees/ teachers/ aggrieved persons against the Army Welfare Education Society (AWES) or against Army Public School for vindication of their rights and claims ?”

19. The Registry is, therefore, accordingly directed to place the matter before Hon’ble the Acting Chief Justice for forming appropriate Larger Bench for its consideration.

20. Photocopy of this order be placed on the files of other connected cases.

(SANJEEV PRAKASH SHARMA)
JUDGE

09.04.2024
Sonia arora/vs

(SUDEEPTI SHARMA)
JUDGE