A.F.R.

Court No. - 1

Case :- SPECIAL APPEAL DEFECTIVE No. - 2 of 2018

Appellant :- Devesh Verma
Respondent :- Christ Church College Throu Principal Hazratganj Lko.And Ors.
Counsel for Appellant :- Ramesh Chandra Saxena,Gaurav Saxena
Counsel for Respondent :- C.S.C.,Jai Pratap Singh

Hon'ble Ramesh Sinha,J.
Hon'ble Subhash Vidyarthi,J.

Order on C.M.An.782 of 2018 (Application for Condonation of delay): -

1- This is an application seeking condonation of delay in filing appeal.

2- We have gone through the affidavit filed in support of the application.

3- The cause shown for the delay is sufficient.

4- The application is allowed.

5- Delay in filing appeal is hereby condoned.

Order On the Special Appeal

1- By means of the instant intra court appeal, the appellant-petitioner has sought to challenge the judgment and order dated 12.09.2017 passed by an Hon'ble Single Judge dismissing Writ Petition No. 6630 (S/S) of 1996, which was filed by the appellant challenging his removal from a post of Lecturer in Christ Church College, Lucknow (which will hereinafter be referred to as 'the college'), on the ground that the removal was done in violation of Section 16 G (3) of the U. P. Intermediate Education Act, 1921.

2- Briefly stated, the facts of the case are that the appellant had filed the Writ Petition pleading that he had been duly selected and was appointed as a Lecturer in Physics in the College and he had joined his duties on 07.10.1991. On 31.03.1992, the Principal of the College had lodged a First Information report against the appellant, bearing Case Crime No. 380 /92 under Sections 504/506 of the Indian Penal Code in Police Station Hazaratganj, Lucknow, and the appellant was

arrested on 16.07.1992. The appellant was granted bail on the same day but the Principal of the College did not permit him to resume his duties and said that he would not permit the appellant to resume his duties until he was acquitted of the charges. Ultimately the appellant was acquitted by means of a judgment dated 24.05.1996, but when he went to join his duties, the Principal of the college told him that another person had been appointed in place of the appellant and the appellant's services had come to an end automatically with effect from 17.07.1992.

3- The appellant challenged the oral termination of his services mainly on the ground that before dispensing with his services, no approval required under Section 16 G (3) of the U. P. Intermediate Education Act was obtained.

4- The college filed a counter affidavit pleading that it is a minority institution recognized by the Indian Council for Secondary Education. It is a private institution which does not receive any financial assistance from the State Government and the State Government has no role to play in it. The provisions of the U. P. Intermediate Education Act are not applicable to the college. It was also stated in the counter affidavit that no selection was held for making appointment on the post of Lecturer and the petitioner personally made a request for his engagement and he was orally allowed to work temporarily on his personal request. The petitioner worked only for about four months and after he misbehaved with the Principal on 31.03.1992, he did not perform his duties even for a single day.

5- The Hon'ble Single Judge has relied upon the judgment of Hon'ble Supreme Court in case of ***Committee of Management, St. John's Inter College v. Girdhari Singh & Ors, (2001) 4 SCC 296*** in which the Hon'ble Supreme Court has held that the provisions of Section 16 G (3) of the U. P. Intermediate Education Act, 1921 are not applicable to the minority institutions. The Hon'ble Single Judge also relied upon a decision of the Hon'ble Supreme Court in the case of ***Committee of Management, La Martinere College, Lucknow v. Vatsal Gupta & Ors., Civil Appeal No. 7030 of 2016*** decided on 26.07.2016, wherein the Hon'ble Supreme Court declined to interfere in a judgment passed

by this Court declining to entertain the writ petition filed against unaided minority private institution.

6- The Hon'ble Single Judge dismissed the Writ Petition as not maintainable, taking into consideration the plea taken in the counter affidavit that the College, Lucknow is a private minority institution recognized by Indian Council of Secondary Education and the writ petition filed against a private minority institution is not maintainable.

7- Sri R. C. Saxena, Advocate, the learned Counsel for the appellant has submitted that the College is engaged in imparting education to the children, which is a public duty and the writ petition filed against such an institution would be maintainable. In support of his contention, the learned Counsel for the appellant has placed reliance upon the following decisions: -

I - Andi Mukta Sadguru Shree Muktajee Vandas Sawmi Suvarna Jayanti Mahotsava Smarak Trust & Ors. v. V.R. Rudani & Ors., (1989) 2 SCC 691

II - Abu Zaid and Ors. vs. Principal, Madrasa-Tul-Islah Saraimir, Azamgarh and Ors. AIR 1999 All 64

III - Sandeep Chauhan and Ors. Vs. Respondent: State of U.P. and Ors. 2001 (2) LBESR 644

IV – Harold James versus Union of India, (2004) 22 LCD 1649
V - Ramesh Ahluwalia v. State of Punjab, (2012) 12 SCC 331
VI – Roychan Abraham versus State of U. P., (2019) 2 UPLBES 1148 (FB)
VII –Marwari Balika Vidyalaya v. Asha Srivastava, (2020) 14 SCC 449,
VIII - St. Mary's Educational Society and another versus Rajandra Prasad Bhargava and others, 2022 Scc OnLine SC 1091

8- Per contra, Sri Jai Pratap Singh, the learned counsel representing the college has submitted that the institution in question being a private unaided minority institution, the Hon'ble Single Judge had rightly held that the writ petition is not maintainable. He has placed reliance upon the following judgments: -

I – Committee of Management, La Martiniere College, Lucknow versus Vatsal Gupta and others, S.L.P. (Civil) NO. 3182 of 2016, decided on 26.07.2016,

II - Satimbla Sharma v. St Paul's Senior Secondary School, (2011) 13 SCC 760

III - Dr. S. N. Tripathi versus State of U. P. 2010 SCC OnLine All 1965

IV - Committee of Management, St. John Inter College v. Girdhari Singh, (2001) 4 SCC 296

9- We have considered the aforesaid submissions made by the learned counsel for the parties.

10- In **Bhavnagar University v. Palitana Sugar Mill (P) Ltd.**, (2003) 2 SCC 111, the Hon'ble Supreme Court held that: -

> ***"****A decision, as is well known, is an authority for which it is decided and not what can logically be deduced therefrom. It is also well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision."*

11- In **Escorts Ltd. v. CCE**, (2004) 8 SCC 335 and **Bharat Petroleum Corpn. Ltd. v. N.R. Vairamani**, (2004) 8 SCC 579, the Hon'ble Supreme Court held that: -

> ***"8.*** *Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are neither to be read as Euclid's theorems nor as provisions of a statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for Judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. v. Horton (1951) 2 All ER 1 (HL), Lord MacDermott observed: (All ER p. 14 C-D)*
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> *"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J., as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge,..."*
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> ***9.*** *In Home Office v. Dorset Yacht Co. (1970) 2 All ER 294, Lord Reid said (All ER p. 297g-h),*

"Lord Atkin's speech ... is not to be treated as if it were a statutory definition. It will require qualification in new circumstances."

Megarry, J. in Shepherd Homes Ltd. v. Sandham (No. 2)[4] observed: (All ER p. 1274d-e) "One must not, of course, construe even a reserved judgment of even Russell, L.J. as if it were an Act of Parliament;" And, in Herrington v. British Railways Board[5] Lord Morris said: (All ER p. 761c)

"There is always peril in treating the words of a speech or a judgment as though they were words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case."

***10.** Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper."*

12- In the light of the aforesaid principles, we proceed to examine the ratio of decisions relied upon by the learned Counsel for the parties in light of the factual background in which the ratio was laid down.

13- In **Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani**, (1989) 2 SCC 691, the teachers of a private institution had filed a Writ Petition claiming payment of their dues upon termination of their services consequent to closure of the institution. The Hon'ble Supreme Court proceeded to decide the questions involved after noting that: -

***"5. As is obvious from these reliefs, the retrenched persons were not agitating for their continuance in the service.** They seem to have made a trust with the destiny and accepted the closure of the college. They demanded only the arrears of salary, provident fund, gratuity and the closure compensation which are legitimately due to them.*

* * *

***13.** The decision in Vaish Degree College (1976) 2 SCC 58 was followed in Deepak Kumar Biswas case (1987) 2 SCC 252. There again a dismissed lecturer of a private college was seeking reinstatement in service. The Court refused to grant the relief although it was found that the dismissal was*

wrongful. This Court instead granted substantial monetary benefits to the lecturer. ***This appears to be the preponderant judicial opinion because of the common law principle that a service contract cannot be specifically enforced.***

14. But here the facts are quite different and, therefore, we need not go thus far. There is no plea for specific performance of contractual service. The respondents are not seeking a declaration that they be continued in service. They are not asking for mandamus to put them back into the college. They are claiming only the terminal benefits and arrears of salary payable to them. *The question is whether the trust can be compelled to pay by a writ of mandamus?*

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

* * *

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

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

(Emphasis supplied)

14- It cannot be lost sight of that the aforesaid proposition was laid down after taking note of the facts that the retrenched persons were not agitating for their continuance in the service and They had demanded only the arrears of salary, provident fund, gratuity and the closure compensation which were legitimately due to them. There was no plea for specific performance of contractual service. The respondents were not seeking a declaration that they be continued in service. They were not asking for mandamus to put them back into the college. They were claiming only the terminal benefits and arrears of salary payable to them and the question was whether the trust could be compelled to pay by a writ of mandamus. The Court held that if the management of the college is purely a private body with no public duty mandamus will not lie. The appellant trust was managing an affiliated college to which public money was paid as government aid and 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. The Court held that employment in such institutions is not devoid of any public character and so are the service conditions of the academic staff. When the University takes a decision regarding their pay scales, it will be binding on the management. The service conditions of the academic staff are, therefore, not purely of a private character.

15- In the present case, the college is a private minority institution which does not receive any financial aid from the Government and the grievance raised is against termination of services of a teacher and the prayer made is for restitution of the appellant in service. Therefore, the aforesaid principles laid down in Andi Mukta after specifically highlighting that the petitioners in that case were not challenging the termination of their services and they were not seeking restitution in service, will not apply to the present case.

16- **Abu Zaid and Ors. vs. Principal, Madrasa-Tul-Islah Saraimir, Azamgarh and Ors.** AIR 1999 All 64, was a petition filed by the students who had been debarred from taking up their studies in the institution on account of their involvement in a criminal case and it was also not a case in which the legality of order of termination of services of a minority institution was in issue. It was submitted before the Court that "*The respondents have illegally and without affording any opportunity of hearing or of showing cause, prevented them from attending their classes though no specific orders have been passed. The petitioners have, of necessity, to file the present writ petition as the respondents are bent upon to deprive the petitioners from their lawful right to continue their studies In the respondent-institution".* While deciding the Writ Petition, the Single Bench held that: -

> *"10. The respondent Madrasa-Tul-Islah, Saraimir, Azamgarh admittedly is an institution duly recognised under the Societies Registration Act and its affairs are regulated by the approved bye-laws and scheme of administration. The institution even though a minority one, is discharging a public duty of imparting education, which has been held to be a fundamental right. Therefore, in view of the law discussed above, the petitioners are entitled to approach this Court for issuing appropriate direction and orders in the nature of writ."*

17- In **Sandeep Chauhan and Ors. Vs. Respondent: State of U.P. and Ors.** 2001 (2) LBESR 644, a Division Bench of this Court held that writ petition against Central Board of Secondary Education, Shiksha Kendra. Preet Vihar, New Delhi, is maintainable.

18- In **Ramesh Ahluwalia v. State of Punjab**, (2012) 12 SCC 331, the Hon'ble Supreme Court held that: -

> ***"12.*** *We have considered the submissions made by the learned counsel for the parties. In our opinion, in view of the judgment rendered by this Court in Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust there can be no doubt that even a purely private body, where the State has no control over its internal affairs, would be amenable to the jurisdiction of the High Court under Article 226 of the Constitution, for issuance of a writ of mandamus. Provided, of course, the private body is performing public functions which are normally expected to be performed by the State authorities.*
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> * * *
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> ***16. We are of the considered opinion that since the writ petition clearly involves disputed questions of fact, it is appropriate that the matter should be decided by an appropriate tribunal/court****."*
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> (Emphasis supplied)

19- In **Roychan Abraham versus State of U. P.**, (2019) 2 UPLBES 1148 (FB), a Full Bench of this Court held that: -

> *"Private Institutions imparting education to students from the age of six years onwards, including higher education, perform public duty primarily a State function, therefore are amenable to judicial review of the High Court under Article 226 of the Constitution of India."*

20- In **Marwari Balika Vidyalaya v. Asha Srivastava**, (2020) 14 SCC 449, the Hon'ble Supreme Court held that a writ application is maintainable even as against the private unaided educational institutions.

21- In **Satimbla Sharma v. St Paul's Senior Secondary School**, (2011) 13 SCC 760 the Hon'ble Supreme Court held that: -

> *"unaided private minority schools over which the Government has no administrative control because of their autonomy under Article 30(1) of the Constitution are not State within the meaning of Article 12 of the Constitution. As the right to equality under Article 14 of the Constitution is available against the State, it cannot be claimed against unaided private minority schools."*
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> * * *

> ***25.*** *Where a statutory provision casts a duty on a private unaided school to pay the same salary and allowances to its teachers as are being paid to teachers of government-aided schools, then a writ of mandamus to the school could be issued to enforce such statutory duty. But in the present case, there was no statutory provision requiring a private unaided school to pay to its teachers the same salary and allowances as were payable to teachers of government schools and therefore a mandamus could not be issued to pay to the teachers of private recognised unaided schools the same salary and allowances as were payable to teachers of government institutions."*

22- In **Dr. S. N. Tripathi versus State of U. P.** 2010 SCC OnLine All 1965, this Court held "*that a Government aided private society constituted under the Societies Registration Act, shall not be 'State' within the meaning of Article 12 of the Constitution of India. Hence the writ petition is not maintainable."* The Court further held that: -

> *"15. However, it does not mean that the petitioner or the employees of the Government added College are remediless. In the event of Intermediate College, the District Inspectors of Schools or Deputy Director of Region or the Director of Education has got ample powers to interfere in accordance with the provisions contained in the statute or under the Payment of Salaries Act. In case a degree college is affiliated to University, then under the U.P. Universities Act and its statutes, the employees have got right to approach the appropriate authority like Vice-Chancellor/Director of Higher Education, to ventilate their grievance.*
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> *16. Accordingly, while holding that the present writ petition as not maintainable, we give liberty to the petitioner to approach the Director Higher Education with regard to payment of salary in question or the Vice-Chancellor as the case may be. In case the petitioner represents his cause, it shall be considered and decided expeditiously say, within three months from the date of receipt of a certified copy and communicate the decision."*

23- In ***Committee of Management, La Martinere College, Lucknow v. Vatsal Gupta & Ors., Civil Appeal No. 7030 of 2016*** decided on 26.07.2016, the Hon'ble Supreme Court declined to interfere in a

judgment passed by this Court declining to entertain the writ petition filed against unaided minority private institution and held that: -

> *"Appellant No.1 is an unaided minority private institution. We see no reason how a writ petition against that institution could be entertained. The High Court was clearly in error in entertaining the writ petition and passing subsequent directions."*

24- After taking into consideration numerous previous decisions, in a recent decision of the Hon'ble Supreme Court in **St. Mary's Educational Society and another versus Rajandra Prasad Bhargava and others**, 2022 SCC OnLine SC 1091, the Hon'ble Supreme Court has decided the following two questions: -

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

25- The Hon'ble Supreme Court has been pleased to answer the questions in the following words: -

> ***"69.*** *We may sum up our final conclusions as under:—*
>
> *(a) An application under Article 226 of the Constitution is maintainable against a person or a body discharging public duties or public functions. The public duty cast may be either statutory or otherwise and where it is otherwise, the body or the person must be shown to owe that duty or obligation to the public involving the public law element. Similarly, for ascertaining the discharge of public function, it must be established that the body or the person was seeking to achieve the same for the collective benefit of the public or a section of it and the authority to do so must be accepted by the public.*
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> (b) *Even if it be assumed that an educational institution is imparting public duty, the act complained of must have a direct nexus with the discharge of public duty. It is indisputably a public law action which confers a right upon*

the aggrieved to invoke the extraordinary writ jurisdiction under Article 226 for a prerogative writ. Individual wrongs or breach of mutual contracts without having any public element as its integral part cannot be rectified through a writ petition under Article 226. Wherever Courts have intervened in their exercise of jurisdiction under Article 226, either the service conditions were regulated by the statutory provisions or the employer had the status of "State" within the expansive definition under Article 12 or it was found that the action complained of has public law element.

(c) *It must be consequently held that* ***while a body may be discharging a public function or performing a public duty and thus its actions becoming amenable to judicial review by a Constitutional Court, its employees would not have the right to invoke the powers of the High Court conferred by Article 226 in respect of matter relating to service where they are not governed or controlled by the statutory provisions.*** *An educational institution may perform myriad functions touching various facets of public life and in the societal sphere. While such of those functions as would fall within the domain of a "public function" or "public duty" be undisputedly open to challenge and scrutiny under Article 226 of the Constitution,* ***the actions or decisions taken solely within the confines of an ordinary contract of service, having no statutory force or backing, cannot be recognised as being amenable to challenge under Article 226 of the Constitution.*** *In the absence of the service conditions being controlled or governed by statutory provisions, the matter would remain in the realm of an ordinary contract of service."*

(Emphasis supplied)

26- In **Committee of Management, St. John Inter College v. Girdhari Singh**, (2001) 4 SCC 296, the Hon'ble Supreme Court held that: -

"Since no appropriate guidelines have been provided for exercise of power under Section 16-G(3)(a) of the Act, it must be held that such an uncanalised power on the Inspector or the Inspectress would tantamount to an inroad into the power of disciplinary control of the Managing Committee of the minority institution over its employees and as such the said provision would not apply to the minority institution, as was held by this Court in Frank Anthony case (1986) 4 SCC 707.

* * *

The legislative intent is thus apparent that the legislature never intended to subject the order of termination of an employee of a minority institution to the approval/disapproval of the Selection Board. In this view of the matter, it is difficult for us to hold that an order of termination of an employee of a minority institution cannot be given effect to, unless approved by either the Inspector/Inspectress, as provided in Section 16-G(3)(a) or by the Selection Board, as provided under U.P. Act 5 of 1982. Under the provisions, as they stand, the conclusion is irresistible that the question of prior approval of the competent authority in case of an order of termination of an employee of a minority institution does not arise."

27- From a reading of the aforesaid judgments, the law as summarized in St. Mary's (Supra) is that the employees of a private educational institution would not have the right to invoke the powers of the High Court conferred by Article 226 in respect of matters relating to service where they are not governed or controlled by the statutory provisions. In light of St. John Inter College (Supra), the provisions of Section 16 G (3) of the U. P. Intermediate Education Act are not applicable to the teachers employed in private minority institutions. There is no other Statutory provision, which is alleged to have been violated in the instant case. Therefore, we find ourselves in agreement with the view taken by the Hon'ble Single Judge that the Writ Petition filed by a former teacher against the private unaided minority institution challenging the order of his termination and seeking restitution of his service, is not maintainable.

28- The Writ Petition would not maintainable for one more reason that there are several disputed questions of fact involved in the case. The appellant claims that he had been duly selected and appointed, but he has not filed a copy of the appointment letter or a contract of appointment from which his service conditions may be ascertained. The college has contended neither any advertisement had been issued nor any selection was held and on a personal request made by the appellant, he had been orally engaged to work and after he had worked merely for about 4 months, he misbehaved with the Principal of the college and the Principal had filed a First Information Report against him on 31.03.1992. The appellant did not perform his duties

since thereafter. Whether or not the appellant was duly selected and appointed, and what were his service conditions, are facts which are in dispute and regarding which no material is available on record. For this reason also, the Writ Petition would not be maintainable.

29- In view of the aforesaid discussion, we find ourselves in agreement with the view taken by the Hon'ble Single Judge that the Writ Petition filed by the appellant was not maintainable and we do not find any reason to interfere in the Judgment of the Hon'ble Single Judge.

30- The Special Appeal lacks merits and, accordingly, it is dismissed.

31- However, there will be no order as to costs.

(Subhash Vidyarthi, J.) (Ramesh Sinha, J.)

Order date: 2.1.2023
Pradeep/-