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IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE
HON'BLE SHRI JUSTICE MANINDER S BHATTI

ON THE 20th OF SEPTEMBER, 2022

WRIT PETITION No. 11707 of 2020

BETWEEN:-

SMT.PRAMILAL TIWARI

.....PETITIONER

*(BY SHRI K.C. GHILDIYAL, SENIOR ADVOCATE WITH
SHRI S.K. MISHRA, ADVOCATE)*

AND

1. SATNA DIOCESAN SOCIETY THRO. ITS
PRESIDENT BISHOPS HOUSE POST BOX NO. 22
SATNA DISTT. SATNA (M.P.) (MADHYA
PRADESH)
2. JYOTI SENIOR SECONDARY SCHOOL THROUGH
MANAGER ALLAHBAD ROAD REWA (MADHYA
PRADESH)
3. THE EDUCATION SECRETARY SATNA
DIOCESAN SOCIETY DIOCESAN SOCIETY
BISHOP'S HOUSE POST BOX NO. 22 (MADHYA
PRADESH)
4. THE SCHOOL MANAGING COMMITTEE
THROUGH CHAIRMAN JYOTI SENIOR
SECONDARY SCHOOL ALLAHABAD ROAD
(MADHYA PRADESH)
5. THE MANAGER JYOTI SENIOR SECONDARY
SCHOOL ALLAHABAD ROAD (MADHYA
PRADESH)

.....RESPONDENTS

(BY SHRI ARJUN SINGH, ADVOCATE)

.....
This petition coming on for hearing this day, the court passed the

following:

ORDER

Heard on I.A. No.5872/2021 - preliminary reply/objection on behalf of the respondents.

2. Learned counsel for respondents submits that in the present petition, the petitioner is seeking quashment of the order dated 19-6-2020 which has been issued by respondent which is a private minority unaided educational institution, functioning under a society, which is named and styled as Satna Diocesan Society.

3. Learned counsel contends that a certificate has been issued to the employer under Article 30 of the Constitution of India which reflects that the employer is a minority institution in terms of Article 30 of the Constitution. Learned counsel also submits that the service condition of the petitioner are governed by the bylaws of the society and the said bylaws have no statutory force. Thus, in the light of the law laid down by this Court in **W.A. No.1004/2018 [Guru Ramdas Khalsa Institute of Science and Technology, Pharmacy, Jabalpur and another vs. Akhilesh Tripathi & others]**; the order of the Apex Court in the case of **Committee of Management, La Martiniere College, Lucknow, Thr. its Principal and another vs. Vatsal Gupta and ors., 2016 SCC OnLine SC 743** and also the order passed by this Court in **R.P. No.510/2018 (Principal/Manager Christ Jyoti Senior Secondary, Road Satna Vs. Manisha Singh & Others)** the present petition is not maintainable.

4. Learned counsel for petitioners also submits that recently the Supreme Court in the case of **St. Mary's Education Society and another vs. Rajendra Prasad Bhargava & others, (Civil Appeal No.5789 of 2022)** has

held that a writ petition against a private unaided educational institution is not maintainable, inasmuch as the service conditions of the petitioner are not governed or controlled by any statutory provisions and, therefore, the present writ petition deserves to be dismissed being not maintainable.

5. Per contra, learned senior counsel for the petitioner submits that the Apex Court after considering the all previous judgements, has now decided the issue and has arrived at conclusions in **St. Mary's Education Society and another (supra)**. According to learned counsel for petitioner, the petition is maintainable in view of para 68(d) of the judgment of the Apex Court. The learned counsel submits that the Supreme Court has held that a non-teaching staff of a private unaided institution, is only an agency created by it, and the term employment between a school and non-teaching staff cannot be brought within the purview of discharge of public duties, but this observation does not pertain to teaching staff.

6. It is further contended by the learned counsel for petitioner that the Apex Court in the case of **St. Mary's Education Society and another (supra)** has narrowed down the scope of interference with an issue relating to a member of non-teaching staff, but submits that the petitioner being a teacher, the present petition is maintainable in view of the law laid down by the Supreme Court in the case of **Marwari Balika Vidhyalaya vs. Asha Shrivastava, (2020) 14 SCC 449**.

7. Regard being had to the submissions advanced on behalf of the parties, the Apex Court now in the case of **St. Mary's Education Society and another (supra)** while dealing with the judgments in the cases of **Marwari Balika Vidhyalaya (supra)**, **Ramesh Ahluwalia vs. State of Punjab, (2012) 12 SCC 331** and also **Binny Ltd. and another vs. Sadasivan and others,**

(2005) 6 SCC 6571 has in paragraph 68 of the judgement summed up as follows :

"68. We may sum up our final conclusions as under:

(a) An application under Article 226 of the Constitution is maintainable against a person or a body discharging public duties or public functions. The public duty cast may be either statutory or otherwise and where it is otherwise, the body or the person must be shown to owe that duty or obligation to the public involving the public law element. Similarly, for ascertaining the discharge of public function, it must be established that the body or the person was seeking to achieve the same for the collective benefit of the public or a section of it and the authority to do so must be accepted by the public.

(b) Even if it be assumed that an educational institution is imparting public duty, the act complained of must have a direct nexus with the discharge of public duty. It is indisputably a public law action which confers a right upon the aggrieved to invoke the extraordinary writ jurisdiction under Article 226 for a prerogative writ. Individual wrongs or breach of mutual contracts without having any public element as its integral part cannot be rectified through a writ petition under Article 226. Wherever Courts have intervened in their exercise of jurisdiction under Article 226, either the service conditions were regulated by the statutory provisions or the employer had the status of "State" within the expansive definition under Article 12 or it was found that the action complained of has public law element.

(c) It must be consequently held that while a body may be

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

(d) Even if it be perceived that imparting education by private unaided the school is a public duty within the expanded expression of the term, an employee of a non-teaching staff engaged by the school for the purpose of its administration or internal management is only an agency created by it. It is immaterial whether or not is employed by school to discharge that duty. In any case, the terms of employment of contract between a school and non-teaching staff cannot and should not be construed to be an inseparable part of the obligation to impart education. This is particularly in respect to the disciplinary proceedings that may be initiated against a particular employee. It

is only where the removal of an employee of non-teaching staff is regulated by some statutory provisions, its violation by the employer in contravention of law may be interfered by the court. But such interference will be on the ground of breach of law and not on the basis of interference in discharge of public duty.

(e) From the pleadings in the original writ petition, it is apparent that no element of any public law is agitated or otherwise made out. In other words, the action challenged has no public element and writ of mandamus cannot be issued as the action was essentially of a private character."

8. A perusal of the aforesaid conclusions as arrived at by the Apex Court reflect that their Lordships held that an educational institution may perform certain functions touching various facets of public life and in the societal sphere. The Apex Court also clearly held that, even if the educational institution imparting public duty, the act complained of must have a direct nexus with the discharge of public duty. The Apex Court further held that the actions and decisions taken within the confines of an ordinary contract of service, having no statutory force, cannot be recognized as being amenable to challenge under Article 226 of the Constitution of India. The Hon'ble Supreme Court further observed that challenge has to be one concerning element of public law and a mandamus cannot be issued, if the action falls within the ambit of a "private character".

9. The Apex Court in para 68(d) of the judgment discussed the cases pertaining to non-teaching staff of an educational institution and has discussed the scope of interference. However, so far as sub-paras (a), (b), (c) and (e) of para 68 of the judgment are concerned, if the case of the petitioner is

scrutinized in the light of the aforesaid sub-paras of para 68, it would reveal that the petitioner herein, is assailing the order of termination which has been issued in view of the bylaws of the society, which have been brought on record as Annexure-P/2. The bylaws, undisputedly, have no statutory force, nor issuance the order of termination, can be brought within the ambit of "an act in discharge of public duty".

10. Thus, in the considered view of this Court, issuance of an order of termination has no nexus with discharge of public duty, nor there is any allegation of violation of any statutory provisions/rules. Thus, the respondents being a private unaided minority educational institution, the writ petition against the respondent No.1 - Society is not maintainable, in view of the law laid down by the apex Court in **St. Mary's Education Society and another (supra)**.

11. *Ex-consequenti*, the writ petition stands dismissed, being not maintainable. No order as to costs.

(MANINDER S BHATTI)
JUDGE