

IN THE HIGH COURT OF JUDICATURE AT PATNA

Shiv Shankar Singh

Versus

The State of Bihar & Ors.

CWJC No. 5476 of 2020

08th Day of May 2025

[Hon'ble Mr. Justice Bibek Chaudhuri]

Issue for Consideration

Whether the appointment of a teacher by a minority educational institution requires prior or post facto approval by the Director of Secondary Education? Whether termination of service without approval and due procedure is valid? Whether the petitioner is entitled to salary for the period she served pending approval? The extent of writ jurisdiction over minority educational institutions in matters of service conditions?

Headnotes

Appointment and Approval of Teachers in Minority Schools – subject to approval by the competent State Education authorities - Approval Process and Effect of Non-Approval - Termination of Services without Approval may be called into question - Entitlement to Salary During Pending Approval - Jurisdiction of Writ Petition Against Minority Educational Institutions – maintainable - Scope of Article 30 and Regulatory Control - Right to Fair Procedure in Disciplinary Action - Termination must be in accordance with such procedures and statutory safeguards, failing which it can be challenged - Regulatory Authority and Educational Standards - Public Function and Writ Jurisdiction – Writ petition allowed.

Held: The Managing Committee of the minority school has the authority to appoint teachers against sanctioned posts, subject to approval by the competent authority, which may be given after appointment. Termination of service without following the prescribed procedure and approval is

irregular and can be challenged. The petitioner is entitled to salary for the period of service rendered pending approval. Minority educational institutions are protected under Article 30 of the Constitution, but this protection does not exempt them from compliance with applicable laws regarding appointments and terminations. Writ jurisdiction over minority institutions is limited but maintainable in cases of violation of statutory or fundamental rights.

Case Law Cited

(1988) PLJR SC 7, (2011) 13 SCC 760, (2005) 6 SCC 357, (2014) 2 SCC 305, (1988) 1 SCC 206, AIR 1967 Supreme Court 1427

List of Acts

The Constitution of India, 1950, The Bihar Non-Secondary Schools (Taking Over Management and Control) (Amendment) Act, 2011, The Bihar School Education Act, 1981, The Bihar Education Code.

List of Keywords

N/A

Case Arising From

N/A

Appearances for Parties

For the Petitioner/s : Mr. Chandra Sen Prasad Singh, Advocate

For the State : Mr. Shankar Kumar Thakur, AC to GP-27

For the School : Mr. K.M. Joseph, Advocate

Mr. Cebin Mathew, Advocate

Headnotes Prepared by: Ravi Raj

Judgment/Order of the Hon'ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5476 of 2020

Shiv Shankar Singh Son of Sri Madan Singh @ Madan Prasad Singh Resident of Village and P.O.- Hajipur- Billor, Police Station- Barh, District- Patna (Bihar) PIN Code- 803213.

... .. Petitioner/s

Versus

- 1. The State of Bihar through the Director Middle Education (Madhyamik Shiksha), Government of Bihar, Patna.
- 2. The Joint Director, Middle Education (Madhyamik Shiksha), Government of Bihar, Patna.
- 3. The District Magistrate, District- Patna.
- 4. The District Programme Officer, District- Patna.
- 5. The District Education Officer, District- Patna.
- 6. The Secretary, School Management Committee, St. Josephs Convent Girls High School (plus 2) Barh, Patna 803213.
- 7. The Principal, St. Joseph Convent Girls High School (plus 2) Barh, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Chandra Sen Prasad Singh, Advocate
For the State : Mr. Shankar Kumar Thakur, AC to GP-27
For the School : Mr. K.M. Joseph, Advocate
Mr. Cebin Mathew, Advocate

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
C.A.V. JUDGMENT

Date : 08-05-2025

Heard Mr. Chandra Sen Prasad Singh, learned counsel appearing on behalf of the petitioner; Mr. Shankar Kumar Thakur, learned AC to GP-27 appearing on behalf of the State and Mr. K.M. Joseph, learned counsel along with Mr. Cebin Mathew, learned counsel for the respondents no. 6 and 7.

2. The petitioner in paragraph no. 1 of the present writ petition has sought *inter alia* following relief(s), which is reproduced hereinafter:



"I) For issuance of an appropriate Writ, order or direction commanding the respondents to grant approval on the post of Art Teacher of St. Josephs Convent Girls High School (+2) Barh Patna as he is duly appointed Teacher of the said School.

II) For issuance of direction, Writ or order commanding the Respondents to give/grant approval of his service on the post of Art Teacher of St. Joseph Convent Girls Hibh School (+2) Barh Patna as he has been appointed by facing the interview constituted by Secretary of Managing Committee of concerned School.

III) For issuance of direction, Writ or order commanding the Respondents to grant approval regarding petitioner on the post of Art Teacher of St. Joseph Convent Girls High School (+2) as petitioner applied for the post as per post advertise by Education Department dated 8/3/2013 which has been invited by Secretary of the School.

IV) For issuance of direction, Writ or order commanding the respondents to grant approval on the post of Art Teacher from the date of joining i.e. 2nd May 2016 and further commanding the Respondents not to appoint any teacher on the post of Art Teacher till approval.

V) For issuance of direction, Writ or order commanding the respondents not to disturb the petitioner for working as Art Teacher till approval as with ill view Respondents No. and 7 are not complying the query made with regard to approval by Respondents No. 1 and 2 and inordinate delay caused petitioner is not getting salary since the date of joining.

VI) For issuance of appropriate Writ or direction commanding the respondents to grant immediate approval and further command may be issued not to disturb in peaceful work of the petitioner and petitioner has apprehension to create any problem and hindrance in granting approval by Respondents.

VII) For a direction be issued to grant approval of service of petitioner as Arts Teacher forthwith as justice is being denied and grant any reliefs as your Lordships may deem fit in the interest of petitioner."



BRIEF FACTS:

3. The petitioner was appointed as an Art Teacher in St. Joseph Convent Girls High School (+2), Barh, Patna by the Managing Committee of the school against the post sanctioned by the Government after following due procedure of selection. The concerned school is a minority school, where the appointment of the teachers is made by the Managing Committee in accordance with the provision of the Bihar Non Secondary Schools (Taking Over Management and Control) (Amendment) Act, 2011 (hereinafter referred to as the "Act, 2011"). *Vide* letter no. 3959 dated 30.12.2016 for which, the proposal for approval was sent to the Director Secondary Education. In process of scrutiny of the proposal, clarification *vide* letter no. 1094 dated 11.10.2017 was sought by the Joint Director, Secondary Education. In compliance, the Principal of the school in question had informed *vide* letter no. dated 58/18 dated 09.07.2018 that the petitioner has already been terminated from service *vide* letter no. 42 dated 17.05.2018 by the competent authority, who is the Secretary of the Managing Committee of the school and before the termination order was passed, the petitioner was paid Rs. 3000/- per month, which has been directed to be refunded.



SUBMISSION ON BEHALF OF THE PETITIONER:

4. Learned counsel appearing on behalf of the petitioner submitted that the petitioner was appointed as an Arts Teacher after following the due prescribed procedure against the sanctioned vacant post. The petitioner had joined the school on 01.05.2016. An application was placed by the Managing Committee before the District Education Officer, Patna, for approval, who forwarded the same vide letter no. 3959 dated 30.12.2016 to the Director, Secondary Education/Middle Education to grant approval for appointment on the vacant sanctioned post to the petitioner. The Joint Director Secondary/Middle Education, Bihar, Patna had sought clarification vide letter no. 1094 from the District Education Officer, Patna about STET examination, which the petitioner had passed in the year 2011 before he had passed Bachelor in Arts in the year 2012. The District Programme Officer (Establishment) Patna vide letter no. 9873 dated 26.12.2015 had granted units in Arts subject in Middle Education/Secondary Education and in compliance of that petitioner has been appointed as Arts Teacher in the school. It is the case of the parties that since the year 2016, no approval of the post was accorded. Due to absence of approval by the authorities, the



petitioner faced monetary constraint, as the salary of the petitioner has not been paid since 01.05.2016. The management of the school vide Letter No. 18 dated 19.05.2018, had informed the District Education Officer, Patna that services of the petitioner has been terminated by the Management with effect from 17.05.2018 on certain charges. Learned counsel submitted that the termination order of the petitioner contained in Letter No. 42 dated 17.05.2018 has been brought on record by the respondents no. 6 and 7 in their counter affidavit, alleging therein that Disciplinary Proceeding was initiated against the petitioner and after following due procedure according to the service conditions rules of the school, the Managing Committee found the petitioner to be guilty of serious misconduct. Learned counsel submitted that the petitioner has been adversely affected by the termination order, which is allegedly in accordance with their own Service Conditions Rules. It is further submitted that the school is governed by the provision of Bihar Non-Government High Schools (Take Over of Management and Control) Act, 1982, which allows the school to select and appoint teachers, who are possessing prescribed qualification. The affairs of the school is thus, regulated by the State Government and the action taken against the petitioner insofar



as terminating from his service, allegedly in exercise of the power of administration in accordance with the service conditions laid down by the Managing Committee, cannot be said to be in accordance with the provision of Article 311(2) of the Constitution of India. On these grounds, learned counsel submitted that to avail remedy of appeal as per the school regulation, will be failure of justice in view of the admitted position that no approval has been taken from the Director, in accordance with the provision of the Act, 1981 before the order of termination was passed.

SUBMISSION ON BEHALF OF THE RESPONDENT

NO. 1:

5. *Per contra*, Learned counsel appearing on behalf of the respondent submitted that St. Joshephs Convent Girls High School (+2) Barh, Patna is a minority school. According to section 18 (b) (ii) of the Bihar Non-Government Secondary School (Taking Over Management and Control) (Amendment) Act, 2011, "the managing committee of the minority secondary school may appoint teachers against posts sanctioned by the state government, as per eligibility criteria, prescribed under the Bihar Nagar Nikay Secondary and Higher Secondary teachers (Employment) Rules 2006 (as amended



from time to time) and the Bihar Zila Parishad Secondary and Higher Secondary Teachers (Employment) Rules, 2006 (as amended from time) after Director, of Secondary Education through District Education Officer...". Accordingly, qualifying Eligibility Test is a Teacher's necessary pre-requisite for a valid appointment on the post of Arts teacher in the above mentioned school as per section 4 (viii) of the Bihar Nagar Nikay Secondary and Higher Secondary teachers (Employment) Rules 2006 (as amended from time to time) and the Bihar Zila Parishad Secondary and Higher Secondary Teachers (Employment) Rules, 2006 (as amended from time to time). He further submitted that upon perusal of the records for approval of the service of the petitioner it came to light that the petitioner has graduated in the year 2012 however, he had appeared in the STET examination for the year 2011. The respondent no. 5 has been instructed to provide clarification and remarks on the above mentioned state of affairs vide letter no. 10/A-24 / 2017 1094 dated 10.11.2017 and vide letter 24/2017-1486 dated 14.12.2022. Vide letter no. Ref SJS 07 /2018 dated 23.01.2018 it has been appraised by the Secretary of the school that consequent to several complaints against the petitioner and upon giving him an opportunity of being heard, the petitioner was



found guilty of misconduct and emotionally imbalanced behavior with students and fellow teachers. Vide the same letter it was also requested by the Secretary to block the petitioner's appointment and, as such, no interference is required.

SUBMISSION ON BEHALF OF THE RESPONDENTS

NO. 6 & 7:

6. Learned counsel appearing on behalf of the respondent submitted that the managing committee of the school after following due procedure had selected and appointed the writ petitioner, who possessed required qualification as Art teacher in St. Joseph's Convent Girl's High School, Barh against existing vacancy in sanctioned post on 28.04.2016 and the petitioner joined duty on 02.05.2016. The management of St. Joseph's Convent Girl's High School, Barh forwarded an application for approval of appointment of the writ petitioner to Director, Secondary Education through the District Education Officer, Patna on 15.06.2016. He submitted that the Hon'ble Supreme Court by its order dated 26.11.1987 in Writ Petition (Civil) nos. 4588-4589 of 1983 *All Bihar Christian Schools Association and Another Vs. State of Bihar and others* reported in (1988) *PLJR SC 7* has held that as per clause (b) of section 18 of the Act in the case of selection and appointment of



teachers in minority schools the managing committee is required to make appointment of a teacher with the approval of the School Service Board and such approval need not be prior approval. The Hon'ble Supreme Court by order has directed as follows:

"Under clause (b) the managing committee is required to make appointment of a teacher with the concurrence of the School Service Board. The expression 'concurrence' means approval. Such approval need not be prior approval, as the clause does not provide for any prior approval. Object and purpose underlying clause (b) is to ensure that the teachers appointed in a minority school should possess requisite qualifications and they are appointed in accordance with the procedure prescribed and the appointment are made for the sanctioned strength. The selection and appointment of teachers is left to the management of the minority school, there is no interference with the managerial rights of the institution. In granting approval the School Service Board has limited power. The appointment of qualified teachers in a minority school is a sine qua non for achieving educational standard and better administration of the institution".

7. He further submitted that the Director, Secondary Education arbitrarily kept pending the matter of approval of appointment of the writ petitioner made by the management of the minority school and release of due salary to the petitioner. In a number of cases, the Director Secondary Education, taking advantage of absence of any guidelines for expeditious disposal of application for approval of the petitioners withholding approval for long periods causing great



hardships and inconveniences to the employees and putting the additional burden on the management of the schools in many cases to provide some advance/loan to the teachers in distress for supporting themselves during the period until they receive their regular salary. The teachers, who are made to suffer great hardship due to arbitrary delay in approval of their appointments in which the teachers and the school management had to come before this Hon'ble Court in writ applications praying for a writ of Mandamus to the Director, Secondary Education to pass appropriate orders on the applications for approval kept pending before him and informed that similar to the petitioner, the teachers, who were qualified, as a result of arbitrary delay in approval of appointment and in absence of release of his salary, the management of school provided the minimum necessary support to the writ petitioner.

8. Learned counsel further informed that a complaints of serious misconduct in his dealing with some students and teachers were reported to the management of the school and after a preliminary inquiry by the Internal Grievance Committee which found his guilty of misconduct and recommended action to the management in the matter a disciplinary proceeding was initiated by the management and a



domestic inquiry was conducted by an Inquiry Officer appointed by the management. The Inquiry officer on conducting the inquiry found the petitioner guilty of the misconducts alleged. On receipt of the inquiry and its consideration the management issued, a second show cause notice to the employee enclosing a copy of the inquiry report and asking him to show cause as to why his service should not be terminated for his proven misconduct. He further submitted that after the petitioner did not submit any show cause even after extended time given to him for the purpose, the management, after due consideration, vide order dated 17.05.2017 had dismissed the petitioner from service. The management of the School vide letter no. SJS/43/18 dated 19.05.2018 informed the District Education Officer, Patna that the service of the petitioner has been terminated by the management with effect from 17.05.2018 for a proven misconduct after following due procedure laid down in the service condition. He further submitted that the management of the St. Joseph's Convent Girl's High School, Barh Respondent nos. 6 and 7 have acted in accordance with law and in exercise of their right of administration under section 30 of the Constitution of India and in accordance with requirements laid down under section 18 of Bihar Non Government High Schools



(takeover of Management and Control) Act 1982 and procedure laid down in the Service Conditions of the School. The petitioner has prayed for approval of his service at St. Joseph's Convent Girl's High School, Barh and not for approval of his appointment as assistant teacher in the vacant sanctioned post in the school made by the management of the school as recommended by the Management of the school. The writ petition as framed is wholly misconceived as the petitioner is no longer in service of the school from the date, on which his services was terminated i.e. on 17.05.2018.

9. Learned counsel appearing on behalf of the respondents has filed written submission on behalf of respondents no. 6 and 7, I don't find it to reiterate again as the facts have already been recorded in preceding paragraphs except only the question of law. The written submission is kept on record.

10. It is claimed by the petitioner that Right of Children to Free and Compulsory Education Act 2009 are not applicable to minority school as held by the Hon'ble Supreme Court in *Pramati Educational and Cultural Trust vs. Union of India* reported in (2014) 8 SCC 1 in which, it has been that the Right of Children to Free and Compulsory Education Act 2009



are not applicable to minority education institutions. As the provisions of Right of Children to Free and Compulsory Education Act is not applicable to minority education institutions, the minority education institution in imparting education to children is not discharging any public duty imposed by law and the management of the school is not a 'State and as such no application under Article 226 of Constitution of India for issue of writ in the nature of mandamus or any other writ can be issued against it as prayed for by the writ petitioner herein.

11. Learned counsel has further stated that the School was granted recognition by the Government of Bihar by its letter no. 3143-45) dated 11.02.1982 issued by Deputy Director, Department of Secondary Education, Bihar. The School was granted minority status by the Education Department, Government of Bihar by its letter no 5210-22 dated 25.02.1983 issued by the Director, Secondary Education. Article 30 (1) of the Constitution of India guarantees to the minorities based on Religion or Language right to establish and administer education institutions of their choice. Referring to the judgment of the Hon'ble Supreme Court in *T.M.A Pai Foundation vs. State of Karnataka* reported in (2002) 8 SCC 481 it has been stated that the Hon'ble Supreme Court has held that the right to



administration includes the right to lay down service conditions for its employees. Further statement is that in exercise of its right of Administration with the power to lay down service conditions for its employees the Patna Diocese has laid down service conditions binding on its employees. Sub-Section (3) of Section 18 of Bihar Non Government High Schools (Takeover of Management and Control) Act 1982 authorizes the management of minority schools to select and appoint teachers from persons possessing prescribed qualification. Sub Clause (ii) of clause (b) of Subsection (3) of Section 18 of the Act reads as follows;- "18(3)(b) (ii) The Managing Committee of the minority secondary school may appoint teachers against posts sanctioned by the state Government *as per eligibility and criteria, prescribed under the Bihar Nagar Nikay Secondary and Higher Secondary teachers (Employment) Rules, 2006 (as amended from time to time) and the Bihar Zila Parishad Secondary and Higher secondary Teachers (employment) Rules, 2006 (as amended from time to time) after obtaining approval of Director, Secondary Education through District Education Officer. Disposal of all pending cases for approval may also be made by the Director, Secondary Education*".

12. Reliance is also made to the judgment passed



by the Hon'ble Supreme Court in *St. Mary's Education Society and another vs. Rajendra Prasad Bhargava and others* reported in (2023) 4 SCC 498 to contend that the Apex Court has held among others that even if it is perceived that imparting of education by a private unaided institution is a public duty, it is only where the removal of an employee 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 the discharge of public duty. In view of the law laid down by the Hon'ble Supreme Court in *St. Mary's Education Society (supra)*, the writ petition filed by the petitioner in year 2020 praying for reliefs is against the Management of the minority school for a writ directing approval of his service in the school (in the face of the effected termination of his service as teacher by the management following disciplinary proceeding as per the procedure laid down in the service conditions of employees of the school settled by the Management) is not maintainable in the eye of law and the writ petition filed by the Petitioner is fit to be dismissed as such. The writ petition as framed and pleaded by the petitioner is wholly misconceived and not maintainable



under law and is fit to be dismissed.

ANALYSIS & CONCLUSION:

13. Heard the parties.

14. In the year 2011, the State Legislature by Bihar Non Government High Schools (Takeover of Management and Control) Amendment Act 2011 amended the Bihar Non Government High Schools (Takeover of Management and Control) Act 1981 by which among others Subsection (3) of Section 18 was amended by which the Director Secondary Education was vested the power, earlier exercised by the School Service Board of approving the appointment of teachers made by the management of minority school against vacancy in sanctioned post. In exercise of the right of administration of minority community over its education institution the management of St. Joseph Convent High School on 28.04.2016 selected the petitioner, who possessed required qualification and appointed him against existing vacancy in the approved post of Art Teacher in the School. The petitioner joined duty in the school as Assistant Teacher on 02.05.2016. The Management of the School forwarded the proposal for approval of the appointment made by the management as Art Teacher in the School to the Director



Secondary Education through the District Education Officer as per procedure prescribed in the Act.

15. The respondents have admitted that the petitioner had continued to work from the date of his appointment on the vacant sanctioned post till 17.05.2018 in anticipation of the approval by the Director, Secondary Education. Question arises firstly, whether the services of the petitioner can be terminated by the Managing Committee without approval of the Secretary in accordance with Section 18 of 2011 Act as amended up-to-date? Secondly, whether the petitioner is entitled for due salary, who was allowed to teach for substantial period in anticipation of pending approval of the Director, Secondary Education? Thirdly, whether long pendency of the application of approval pending before the Education Department can amount to deemed approval in the case of the petitioner?

16. In the present case, it is admitted that the School namely, St. Joseph Convent Girls High School (+2) is a minority and aided school. The provision of Bihar Non-Government Secondary School (taking over of control and management) Act, 1981 as amended from time to time prescribes for regulatory control over the aided minority institutions.



17. The opposition in regard to maintainability of writ petition has been made on behalf of the respondents no. 6 and 7 on the ground that Article 30 of the Constitution of India protects the minor institution. Reliance has been placed on the judgment of the Apex Court passed in ***St. Mary's Education Society (Supra)*** to content that writ petition is not maintainable against action of the Managing Committee of minority school.

18. The objection on behalf of respondents no. 6 and 7 is also on the basis of the five judges Bench of the Hon'ble Supreme Court in the case of ***Pramati Educational & Cultural Trust vs. Union of India (supra)*** wherein the issue involved was whether "the Right of Children to Free and Compulsory Education Act, 2009" (hereinafter referred to as the 'Act, 2009') was applicable to the minority institutions. The Hon'ble Supreme Court held that the Act, 2009 is not applicable to the institution established and managed by the minority communities and held as follows:

"We accordingly hold that none of the rights under Articles 14, 19(1)(g) and 21 of the Constitution have been abrogated by clause (5) of Article 15 of the Constitution and the view taken by Bhandari, J. in Ashoka Kumar Thakur v. Union of India (supra) that the imposition of reservation on unaided institutions by the Ninety-third Amendment has abrogated Article 19(1)(g), a basic feature of the Constitution is not correct. Instead, we hold that the (Ninety-third Amendment) Act, 2005 of the Constitution inserting clause (5) of Article 15 of the



Constitution is valid."

19. Respondents no. 6 and 7 has also relied on the judgment of ***T.M.A.Pai Foundation (supra)***, wherein the issue was whether the reservation policy of the Government can be imposed on aided or unaided minority educational institution and also to the unaided non minority educational institution. The Hon'ble Supreme Court has held that the minority institutions are protected by Article 30 of the Constitution of India and the reservation policy will not come in way insofar as, admission is concerned.

20. The question whether the unaided private minority school 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 was considered by the Apex Court in the case of **Satimbala Sharma & Ors. vs. St. Pauls Senior Secondary School** reported in **(2011) 13 SCC 760** .The Hon'ble Supreme Court held that, issue regarding the immunity of minority educational institutions is protected from regulatory legislation framed under Article 19(6) of the Constitution of India whereas a seven judges Bench of the Hon'ble Supreme



Court in the Case of *P.A. Inamdar vs. State of Maharashtra* reported in (2005) 6 SCC 357, which was followed by the Apex Court in the case of *Christian Medical College Vellore Association vs. Union of India* reported in (2014) 2 SCC 305. The Apex Court observed that Article 30 is in consonance with other part of the Constitution and the regulatory measures of the government agency do not infringe the right of Educational institutions including the institutions managed by minority communities. Conduct of common admission test for admission to various academic programme doesn't violate the right of educational institutions including the minority educational institutions. In the said judgment, the Apex Court holding that the rights under Articles 19(1)(g) and 30 read with Articles 25, 26 and 29 (1) of the Constitution of India, don't come in a way of securing transparency and recognition of merit in matter of admission it is open to the State to regulate the course of study qualification for ensuring educational standard and imposing reasonable restriction in national and public interest.

21. The validity of the RTE Act, 2009 was upheld by majority judgment in *Society for Unaided Private Schools of Rajasthan Vs. Union of India and Another* reported in (2012) 6 SCC 102, wherein it held that Sections 12(1)(c) and Section



18(3) of the RTE Act, 2009 infringe the fundamental rights guaranteed to aided and unaided minority schools under Article 30(1) of the Constitution and therefore Sections 12(1)(c) and Section 18(3) of RTE Act, 2009 alone shall not apply to such aided and unaided minority schools and as far as other provisions of RTE Act, 2009 is concerned the same is upheld even for aided minority schools.

22. The Constitution Bench of Eleven Judges Bench in ***T.M.A.Pai Foundation(supra)*** case, held that the State or other controlling authorities can always prescribe the minimum qualifications, salaries, experience and other conditions bearing on the merit of an individual for being appointed as a teacher of an educational institution. The relevant portion is culled out hereunder:

“Q 5 (c) Whether the statutory provisions which regulate the facets of administration like control over educational agencies, control over governing bodies, conditions of affiliation including recognition / withdrawal thereof, and appointment of staff, employees, teachers and principals including their service conditions and regulation of fees etc. would interfere with the right of administration of minorities?”

A. So far as the statutory provisions regulating the facets of administration are concerned, in case of an unaided minority educational institution, the regulatory measure of control should be minimal and the conditions of recognition as well as conditions of affiliation to a university or board have to be complied with, but not the matter of day-to-day management, like appointment of staff, teaching and non-teaching and



administrative control over them, the management should have the freedom and there should not be any external controlling agency. However, a rational procedure for selection of teaching staff and for taking disciplinary action has to be evolved by the management itself. For redressing the grievances of such employees who are subjected to punishment or termination from service, a mechanism will have to be evolved and in our opinion, appropriate tribunals could be constituted and till then such tribunal could be presided over by a judicial officer of the rank of District Judge. The State or other controlling authorities, however can always prescribe the minimum qualifications, salaries, experience and other conditions bearing on the merit of an individual for being appointed as a teacher of an educational institution."

23. Thus, the Constitutional Bench of Eleven Judges had held that the government is empowered to prescribe educational qualifications to teachers to be appointed in any schools including minority institutions to qualify to regulatory provision in the considered opinion of this Court, there cannot be any contra opinion that the petitioner institution, which is an aided institution, its action cannot be questioned in writ jurisdiction and, as such, the writ petition cannot be held to be not maintainable.

24. The Apex Court in case of ***All Bihar Christian Schools' Assn. v. State of Bihar*** reported in (1988) 1 SCC 206, in paragraph no. 22, has observed as follows:

"22. Guarantee of freedom to a minority institution under Article 30(1) of the Constitution does not permit the minority institution to act contrary to law and order, law of contract,



industrial laws or other general laws which are enacted for the welfare of the society. If the minorities' claim for immunity from the law of the land is upheld that would be unreasonable and against the interest of the minority institutions themselves. In Christian Medical College Hospital Employees' Union v. Christian Medical College Vellore Association [(1987) 4 SCC 691] a question arose whether Sections 9-A, 10, 11-A, 12 and 33 of the Industrial Disputes Act, 1947 were applicable to educational institutions established and administered by minorities which are protected by clause (1) of Article 30 of the Constitution. This Court answered the question in the affirmative. The Court held that the labour legislation was applicable to the management of a minority educational institution and it observed thus:

“These rights which are enforced through the several pieces of labour legislation in India have got to be applied to every workman irrespective of the character of the management. Even the management of a minority educational institution has got to respect these rights and implement them. Implementation of these rights involves the obedience to several labour laws including the Act which is under consideration in this case which are brought into force in the country. Due obedience to those laws would assist in the smooth working of the educational institutions and would facilitate proper administration of such educational institutions. If such laws are made inapplicable to minority educational institutions, there is every likelihood of such institutions being subjected to maladministration. Merely because an impartial tribunal is entrusted with the duty of resolving disputes relating to employment, unemployment, security of work and other conditions of workmen it cannot be said that the right guaranteed under Article 30(1) of the Constitution of India is violated. If a creditor of a minority educational institution or a contractor who has built the building of such institution is permitted to file a suit for recovery of the money or damages as the case may be due to him against such institution and to bring the properties of such institution to sale to realise the decretal amount due under the decree passed in such suit is Article 30(1) violated? Certainly not. Similarly the right guaranteed under Article 30(1) of the Constitution is not violated, if a minority school is ordered to be closed when an epidemic breaks out in the



neighbourhood, if a minority school building is ordered to be pulled down when it is constructed contrary to town planning law or if a decree for possession is passed in favour of the true owner of the land when a school is built on a land which is not owned by the management of a minority school. In the same way if a dispute is raised by an employee against the management of a minority educational institution such dispute will have necessarily to be resolved by providing appropriate machinery for that purpose. Laws are now passed by all the civilised countries providing for such a machinery.”

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."

29. "The Supreme Court of the United States observed that *absolute discretion is a ruthless master and it is more destructive of freedom than any of man's other inventions. Such exercise of power has a devastating effect and it was held therein that the exercise of power cannot be described as a mere mistake but a gross mistake which implies bad faith. It further went on to widen the horizon of understanding by observing that is not necessary that the malice may be actuated by any monetary considerations as: "Men are more than bribed by their loyalties and ambitions than by money."*

30. "What is rule of law has been explained in several decisions but it has been clearly indicated by the Supreme Court in the Constitution Bench judgment in the case of ***S.G. Jay Singh Vs. Union of India*** reported in ***AIR 1967 Supreme Court 1427*** that absence of arbitrary power is the first essence of the rule of law. If the decision is taken without any principle or without any rule, it is unpredictable and is against



the rule of law. The question is who is to guard the guards themselves. "Quis Custodiet ipsos custodes?"

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.

33. The petitioner has been found by the Managing Committee that he has all the requisite qualifications including the passing of the STET examination in the year 2013, before this employment.

34. The petitioner, who has performed his duty is entitled for his salary in view of the long pendency of approval before the Director, Secondary Education, the petitioner regularly worked. In absence of any adverse order of the Director, the assertion of the respondent State that as the petitioner has been terminated, there is no requirement of any approval cannot be sustained for the said reason that the petitioner must not be made to face the consequence of the order of termination on account of delay caused by the State in granting approval of his appointment by the Managing Committee on the sanctioned vacant post.



35. The entire monetary benefit including salary is required to be paid to the petitioner well within a period of four weeks from the date of communication of this order.

36. Accordingly, the writ petition is allowed.

37. There shall be no order as to costs.

(Purnendu Singh, J)

Niraj/-

AFR/NAFR	A.F.R.
CAV DATE	26.03.2025
Uploading Date	08.05.2025
Transmission Date	N/A

