2024 INSC 501

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 7256-7259 OF 2024
(arising out of S.L.P. (Civil) Nos. 3138-3141 of 2021)

ARMY WELFARE EDUCATION SOCIETY ...APPELLANT
NEW DELHI

VERSUS

SUNIL KUMAR SHARMA & ORS. ...RESPONDENT(S)
ETC.

WITH

CIVIL APPEAL NOS. 7260-7264 OF 2024
(arising out of S.L.P. (Civil) Nos. 3133-3137 of 2021)

J U D G M E N T

J.B. PARDIWALA, J. :

For the convenience of exposition, this judgment is divided into the following parts:

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1. Leave granted.

2. Since the issues raised in both the captioned appeals are the same and the challenge is also to the self-same judgment and order passed by the High Court of Uttarakhand, those were taken up for hearing analogously and are being disposed of by this common judgment and order.

A. FACTUAL MATRIX

3. These appeals arise from the common judgment and order passed by the High Court of Uttarakhand at Nainital dated 02.11.2018 in Special Appeal No. 523 of 2014, Special Appeal No. 524 of 2014, Special Appeal No.128 of 2015, Writ Petition No. 439 of 2015 and Writ Petition No. 776 of 2015 resply by which the High Court dismissed the appeals filed by the appellants herein and thereby affirmed the judgment and order passed by the learned single Judge of the High Court dated 05.08.2014 in Writ Petition No. 341 of 2012 filed by the respondents herein.

4. The controversy involved in the present litigation falls within a very narrow compass. We need not state the facts in detail as the order passed by a coordinate Bench of this Court

dated 15.02.2021 speaks for itself and gives more than a fair idea as regards the dispute between the parties. The order dated 15.02.2021 reads thus:-

> *"1. Delay condoned.*
>
> *2. We have heard Mr Sajan Poovayya, learned Senior Counsel appearing on behalf of the Bengal Engineering Group and Centre, the petitioner in the Special Leave Petitions arising out of SLP (C) Diary No 24505 of 2020, with Mr Abhinav Agrawal, learned counsel, Mr Naresh Kaushik, learned counsel appearing on behalf of Army Welfare Education Society1, petitioner in the Special Leave Petition arising out of SLP(C) Diary No 26155 of 2020 and Mr Gopal Sankaranarayanan, learned Senior Counsel appearing on behalf of the caveators.*
>
> *3. The submission which has been urged by the learned counsel appearing on behalf of the petitioners is that the Bengal Engineering Group and Centre had entered into a lease agreement with the Institute of Brothers of St. Gabriel in respect of the land, which is a B-3 class land under the Cantonment. A School was being conducted by St Gabriel's Academy. After the term of the lease came to an end, a decision was taken to run a school under the auspices of AWES. AWES runs about 139 schools all over the country. On 28 February 2012, a letter was addressed to the staff of the school indicating that those among the teachers who are eligible in terms of CBSE guidelines would be considered for appointment on ad hoc basis for one year and would have to appear and qualify in a written test under AWES Rules and the teachers will be paid salary at par with the service conditions applicable to other teachers of the Army Public Schools. This gave rise to the filing of a writ petition before the High Court of Uttarakhand. The Single*

Judge allowed the writ petition by issuing a mandamus to the petitioners not to vary the service conditions of the teaching and nonteaching staff to their disadvantage. During the pendency of the proceedings before the Division Bench in appeal, an order was passed by the High Court on 6 January 2016. Paragraphs 3 and 4 of the order read as follows:

> *"3. BEG has decided to run the institution as an Army School under the Army Welfare Education Society (AWES), which has also come up in appeal against the judgment. According to AWES, it is running 134 schools all over India. They have a complaint that, at present, for the past two years since 1st April 2012, they are collecting fees at the rates they are collecting in the other Army Public Schools and, yet, they have been compelled to pay the salary, which is being paid to the teachers earlier by St. Gabriel's, which was in fact collecting far more fees and there is a huge deficit. According to them, they will not terminate the services of the teachers and non-teaching staff, if AWES is permitted to take over; but, they will be paid the salary in terms of the standards, which they have in respect of the other Army Public Schools. It is their case that they are prepared to allow the teachers and non-teaching staff to continue, provided some modalities are complied with, relevance of which may not present itself immediately. According to the teachers and non-teaching staff, they have a right to continue as such.*
>
> *4. We would think that the interest of justice requires that the arrangement, which has been ordered by the Court in Writ Petition No. 776 of 2015 (M/S) must be modified.*

Accordingly, we modify the order and direct that AWES can take over the management of the school and the teaching and other non-teaching staff will be allowed to continue, however, with the modification that the pay will be such as they would be entitled to treating it as another Army Public School. This arrangement will be provisional and subject to the result of the litigation and without prejudice to the contentions of the parties. The Committee will handover the management to the AWES upon production of a certified copy of this order. The accounts, etc., will also be handed over to the Principal of the school. We record the submission of the learned counsel appearing for St Gabriel's that they will handover the amount representing gratuity, earned leave encashment and the installment of the sixth pay commission directly to the teachers and other nonteaching staff. We make it clear that the school can be run in terms of the Rules of AWES otherwise. The payment of salary as per AWES can commence from 1st January, 2016."

4. The Division Bench eventually dismissed the Special Appeal against the judgment of the Single Judge, which has given rise to the proceedings before this Court under Article 136 of the Constitution.

5. On behalf of the petitioners, it was submitted that the teaching and nonteaching staff were employees of St Gabriel's Academy and since the erstwhile management has ceased to conduct the school, the staff would have no claim as against AWES which is conducting the school, at present.

6. In order to resolve the dispute, a suggestion has been made by learned counsel for the petitioners to

the effect that the teaching and non-teaching staff of the erstwhile school which is continuing with the present school, which is conducted by AWES, would be continued on a permanent basis. However, it has been submitted that their conditions of service will be those which are applicable to the teaching and non-teaching staff of Army Public Schools. It has been submitted that under the judgment of the High Court the petitioners would be obligated to provide service conditions at par with the teaching and nonteaching staff which was recruited by the erstwhile management which would involve an outlay which the Army Public School will not be in a financial position to meet. That apart, it has been submitted that there cannot be two sets of service conditions in respect of the same school.

7. Responding to the above submissions, Mr Gopal Sankaranarayanan with Mr B Shravanth Shanker, learned counsel, submitted that there are two areas which would require to be resolved, namely,:

> *(i) Seniority of the teaching and non-teaching staff due to the past service should be taken into account; and*
> *(ii) In computing their terminal dues, benefit of the past service should be taken into reckoning.*

8. We find prima facie that the suggestions which have emerged from both the sides are fair and proper in their own way, in order to resolve the dispute amicably. If the dispute is eventually resolved amicably, it would be ensured that, on the one hand, the teaching and non-teaching staff of the erstwhile school would not be displaced and continue to get employment in the present school and, at the same time, their service conditions are at par with those which are applicable to the employees of the Army Public Schools.

9. In order to enable the Court to give the parties an opportunity to resolve the dispute finally, we are of the view that a meeting should be held between the concerned authorities of the School as well as the representatives of the employees in the presence of the learned Senior Counsel so that agreed terms for resolving the dispute finally can be presented before this Court.

10. To facilitate this, we stand over the proceedings by a period of four weeks. The proceedings shall now be listed on 22 March 2021. In the meantime, we request all the parties to ensure that a meeting is convened within a period of one week from today so that progress can effectively be made towards a satisfactory resolution of the dispute in a spirit of dialogue in which the parties have addressed the Court.

11. We direct that no further steps shall be taken in the contempt proceedings till the next date of listing.

12. The services of the teaching and non-teaching staff who are continuing in the management of the Army Public School at Roorkee, at present, shall not be disturbed in the meantime."

5. It appears that after the aforesaid order was passed, the following order dated 23.07.2021 came to be passed:-

"1. Issue notice.

2. Mr Gopal Sankaranarayanan, learned Senior Counsel, appears on behalf of the first respondent with Mr B Shravanth Shanker, learned counsel and waives service.

3. Pending further orders, we stay the operation of the judgments and orders of the High Court dated 2 November 2018 in SPA Nos 523 and 524 of 2014, Writ Petition Nos 439 of 2015 and 776 of 2015 and SPA No 128 of 2015 and dated 9 October 2020 in MCC No 1623 of 2018 and 1626 of 2018, subject to the following conditions:

(i) The respondent – employees who are presently in service shall continue to be on the rolls of Army Public School No 2 conducted by the Army Welfare Education Society1 at Roorkee; and

(ii) The employees shall be entitled to receive their emoluments and other conditions of service at par with the other employees of the corresponding grade who are engaged by the AWES in Army Public School No 2."

B. ISSUES FOR DETERMINATION

6. The following two questions of law fall for our consideration:-

a. Whether the appellant Army Welfare Education Society is a "State" within Article 12 of the Constitution of India so as to make a writ petition under Article 226 of the Constitution maintainable against it? In other words, whether a service dispute in the private realm involving a private educational

institution and its employees can be adjudicated upon in a writ petition filed under Article 226 of the Constitution?

b. Even if it is assumed that the appellant Army Welfare Education Society is a body performing public duty amenable to writ jurisdiction, whether all its decisions are subject to judicial review or only those decisions which have public law element therein can be judicially reviewed under the writ jurisdiction?

C. SUBMISSIONS ON BEHALF OF THE APPELLANT

7. Mr. Naresh Kaushik, the learned senior counsel appearing for the appellant submitted that the respondents originally were employees of an unaided private minority public school by the name St. Gabriel's Academy. As St. Gabriel's Academy is no longer in existence, the teaching and non-teaching staff of St. Gabriel's Academy came to be absorbed by the appellant society. In such circumstances, according to the learned counsel, the writ petition filed by the respondents before the High Court, by itself,

was not maintainable. According to him, the learned single Judge committed a serious error in entertaining such writ petition at the instance of the respondents herein. Even the appeal Court committed the same error.

8. It was further submitted that the appellant is a wholly unaided private society which was established to provide educational facility to meet the needs of the children of the army personnel including the widows and ex-servicemen. It was pointed out that the appellant society is running many schools and institutions and the entire finance for the purpose of administration is managed from the fees collected from the students of the respective school and institution.

9. It was argued that there was no privity of contract between the appellant society and the staff of St. Gabriel's Academy. It was also argued that St. Gabriel's Academy was being run and administered by an unaided private minority society and the appointment/termination of the staff was vested with the Brothers of St Gabriel's only. Further, the Provincial Superior of the Institute of Brothers of St. Gabriel's was the Chairman of School Management Committee (SMC) of St. Gabriel's Academy

as well. The Provincial Superior of the Society is the appointing authority, as well as the appellate authority for the staff, and can appoint/terminate/retire the staff, in their schools. Further, the Provincial Superior of the Society used to be the Head of School Managing Committee vested with the power to appoint/nominate the members as per their rules and regulations. The appellant had no role to play in the affairs of the said school or its management.

10. It was also argued that the education of children is certainly a public function, but that is not the issue in the present matter. The only issue involved is the continuity of service and service conditions of employees of St. Gabriel's Academy, a private minority institution. Neither the institution nor the posts held by the teachers are governed by any statutory obligation. Moreover, the burden of safeguarding such service conditions has been erroneously placed on the appellant. These service conditions are in clear contravention of those followed by all 137 schools run by the appellant society resulting in creating two sets of employees at the APS No. 2, Roorkee. A contract of purely personal service between the Respondents and their

erstwhile employer, viz. St. Gabriels Academy cannot be executed against the appellant in a writ petition with whom there is no privity of contract.

11. It was further pointed out that the appellants are running an Army Public School under the aegis of the Army Welfare Education Society which is a self-financing school managing all expenditures from the school fees. It was submitted that if the impugned order is allowed to operate and the arrangement made in the order dated 06.01.2016 which continued so far smoothly for 8 years is disturbed, the school will suffer irreparable loss and might have to be closed down. The demands of the respondents are outrageous which can be gauged from the fact that the respondents have claimed an amount of Rs. 5.10 crore in their Counter affidavit filed in 2021.

12. In the last, it was pointed out that all the respondents are currently employed at APS No. 2, Roorkee, and their status is on par with any other APS staff member. They are availing the same perks and emoluments available to any APS No 2, Roorkee employee. The basic pay as per the AWES Rules and Regulations was maintained for the teaching staff in accordance with the

recommendations of the VI Pay Commission. Furthermore, for the members of the teaching staff, experience of more than 5 years was accounted for with additional increments at 3% of Basic Pay for every block of three years of service or part thereof, as of April 2012. Subsequently, an annual increment of 3% of Basic Pay (as on March 31 of every financial year) was provided for every completed year. Dearness Allowance (DA), House Rent Allowance (HRA), and all other applicable allowances, including free education for the wards of staff, was considered as per the AWES Rules and Regulations, as prevailing in January 2016. The salary of office and Class IV staff was fixed as per the prevailing rules and seniority was catered to by additional increments at 10% of the annual increment for every three years of service. No employee came to be appointed after 2012 drawing a higher salary than the respondents. These staff members have been given even ten to twelve increments, a practice usually not followed in APS 2.

13. In such circumstances referred to above, the learned counsel appearing for the appellant society submitted that there being merit in the appeals, those may be allowed by setting aside

the impugned common judgment and order passed by the High Court. But at the same time, the interim order passed by this Court dated 15.02.2021 may be made absolute.

D. SUBMISSIONS ON BEHALF OF THE RESPONDENTS

14. On the other hand, these appeals have been vehemently opposed by the learned senior counsel appearing for the respondent by submitting that the no error, not to speak of any error of law, could be said to have been committed by the High Court in passing the impugned judgment and order. Accordingly to the learned counsel, the appellant society is a "State" within Article 12 of the Constitution for the following reasons:-

a) That, as per the amendments made to the Memorandum of Army Welfare Education Society, the address of the Army Welfare Education Society (AWES) is shown to be the Adjutant General's Branch in the Integrated headquarters of the Ministry of Defence [MoD] (Army).

b) Further, the Executive Committee and the Board of Governors i.e., the President, Vice President and

the Secretaries are none other than the Lt. Generals, chief of the Army Staff, and General Officer commanding in-chief of the Eastern, Southern, Western and Northern commands.

c) That, as per the Financial Management clause of the said Memorandum, ***"the corpus and grants for establishment of Army educational institution will be provided by the executive Committee from the welfare funds of the Adjutant General Branch, Army Headquarters.***"

d) AWES is a government run institution i.e., by the Ministry of Defence and hence, a State under Article 12 of the Constitution of India.

15. It was further submitted that the Army Public School-2, Roorkee, is affiliated with the CBSE and is governed by its norms. In other words, the AWES and its affiliate school - Army Public School-2, Roorkee are governed and regulated by statutory provisions. Assuming for the sake of arguments that the dispute is private in nature, the present case is still amenable to writ

jurisdiction for the service conditions of the answering respondents are governed/regulated by statutory provisions.

16. It was further argued that the CBSE Affiliation Bye-Laws Norm 3 (v) categorically provides that ***"The school in India must pay salaries and admissible allowances to the staff not less that the corresponding categories of employees in the State Government schools or as per scales etc. prescribed by the Government of India."*** In fact, AWES publishes advertisement to fill up any vacancy in Army Public School as "Govt. Jobs" in Job's category. It was submitted that considering the alliance between the appellant and St. Gabriel's Academy Roorkee, the respondents were under a legitimate expectation that their conditions of service would not be changed to their disadvantage by the appellant.

17. In such circumstances referred to above, the learned counsel appearing for the respondents prayed that there being no merit in the appeals, those may be dismissed and the impugned judgment and order passed by the learned single Judge as affirmed in appeal may be given effect to.

E. JUDGMENT PASSED BY THE LEARNED SINGLE JUDGE

18. At this stage, we should also look into the judgment passed by the learned single judge of the High Court dated 05.08.2014. The relevant findings recorded by the learned single Judge is as under:-

> *"10. As we have seen, the school in question was earlier known as "St. Gabriel School" which was under the management of a Society, namely, respondent no.4 i.e. St. Gabriel Province of Delhi. Now the management has changed and is presently with respondent no.5/Bengal Sappers St. Gabriel's Academy, Roorkee.*
>
> *11. According to the respondents, referred above, the establishment of school in an Army Unit or Regimental Center is a welfare activity which a Unit or Regimental Center undertakes for the welfare of its personnel and troops and this welfare work does not form apart of any official or statutory duty of the officers of the Army so engaged in the school activity and, therefore, the school activity including its administration is entirely a private enterprises undertaken by the officers and staff of the Indian Army for the welfare of their personnel and their dependents.*
>
> *12. The said respondents (Respondent Nos. 2, 3, 5, 7) further argue that in such a welfare activity, the Government or the Indian Army does not have any control or a role to play, leave aside any deep or pervasive control on the administration or running of the School, as is alleged by the petitioners. They also argue that the welfare activities which are undertaken are financed entirely by raising private funds, primarily from private contributions, by the*

officers and men of various military establishments. The fund is known as "Regimental Fund of the Unit" and is purely private in nature and non-auditable by Central Defence Accounts. The building furniture and equipments provided to respondent nos. 3/Bengal Engineering Group Benevolent Trust and earlier to respondent no.4/ Institute of Brothers of St. Gabriel is provided from the Regimental funds which is purely private property of Bengal Engineering Group Benevolent Trust. There is no Central Government control at all. It is further being argued that respondent nos. 1, 2 i.e. Union of India as well as the Bengal Engineering Group and Centre have been made parties in the writ petition with the sole purpose to make the matter amenable to the writ jurisdiction of this Court, under Article 226 of the Constitution of India, though respondent nos. 1 and 2 do not have any role to play in the present matter or dispute and for the remaining respondents who are presently in control of the affairs of the school a writ petition would not be maintainable.

13. It has also been argued that the Commandant of Bengal Engineering Group and Centre, Roorkee is only the Ex-officio Chairman of the Bengal Engineering Group Benevolent Trust and the welfare activity conducted by the Trust are purely honorary having absolutely no relation to official charter of the duty of army officers and army persons. Respondent no.7 i.e. Army Welfare Education Society is again a private unaided Society registered under the Registration Act, hence does not come under the writ jurisdiction it does not have any grant from the Government of India, State Government and, therefore, not a State or its instrumentalities as defined in Article 12 of the Constitution of India. In order to substantiate this argument, learned counsel for the respondents Mr. Manoj Tiwari, Senior Advocate and Mr. Pullak Raj Mullick have relied upon a Division Bench judgment of Allahabad High Court, namely, ***Army School, Kunaraghat, Gorakhpur***

***Vs. Smt. Shilpi Paul**, 2004 (5) AWC 4934, where it was held that an Army school is purely a private body and not "State" under Article 12 of the Constitution of India, hence writ petition was not maintainable against it. Since it has been held that a writ petition is not maintainable against an Army school by a Division Bench judgment of Allahabad High Court the present writ petition is not maintainable, which is also against an Army School and is exactly on the same footing as the present school i.e. respondent no. 5, which is now known as "Army School No.2". In paragraph nos. 23, 25 and 26 of the above judgment the Division Bench of Allahabad High Court said as under:-*

> *"23. We have carefully considered these judgments as well as the other decisions relied on by the learned counsels for the parties. We have also considered the decision of the learned single judge of this Court in Abu Zaid v. Principal Madrasa-Tul-Islah Sarai Mir, Azamgarh, Civil Misc. Writ Petition No. 14238 of 1998, decided on 28.7.1998. In the decision of Abu Zaid v. Principal Madrasa-Tul-Islah Sarai Mir, Azamgarh (supra) the learned single Judge has held that a writ petition lies even against a private educational institution since the educational institution is discharging a public duty of imparting education which has been held to be a fundamental right by the Supreme Court. We do not agree. In our opinion every school cannot be regarded as State under Article 12 of the Constitution and a writ petition will not lie against a purely private educational institution not receiving funds from the Government or a Government agency as it cannot be deemed to be an instrumentality of the State.*

25. We agree with the view taken by the learned single Judge in V.K. Walia v. Chairman, Army School Mathura Cannt. (supra) and we do not agree with the view taken by the learned single Judge in Smt. Rajni Sharma v. Union of India (supra) since we are of the opinion that the Army School, Gorakhpur, is not State under Article 12 of the Constitution as it does not receive funds from the Government nor does the Government have any control much less deep and pervasive control over it.

26. A similar view was taken by a Division Bench of the Jammu and Kashmir High Court in Writ Petition No. 1415 of 1996, Mrs. Asha Khosa v. Chairman, Army Public School, decided on 17.2.1997, in which the Division Bench of that Court held that the writ petition was not maintainable as the Army Welfare Educational Society is not an instrumentality of the State under Article 12 of the Constitution. Against the judgment of the Jammu and Kashmir High Court a Special Appeal No. 6482 of 1997 was filed before the Supreme Court which was dismissed on 31.3.1997. We fully agree with the view taken by the Jammu and Kashmir High Court in the aforesaid decision."

x x x x

25. During the discussions and negotiation before the transfer, the authorities with whom the management was to vest shortly have not made any definite commitment or given assurance to the teaching or the non teaching staff of the College regarding security of their tenure, or regarding status of their service. In fact the teaching and non teaching staff of the school were never taken into confidence either by the BEG & C or the St. Gabriel Society in their negotiations. When such agreement was executed and the baton was

handed over to the new employer and management, the concern and interest of those who are under the employment ought to be addressed. These are the basic requirements when such change over takes place in a civil society, which is bound by the rule of law. The employees of the school have a legitimate expectation that their conditions of service which were applicable immediately before the change over will not be varied to their disadvantage. However, this is what the new employer intend to do, which is reflected in his letter dated 28.02.2012. The danger to their service is not a mere apprehension of the 14 petitioners. It is a "clear and present" danger. This Court consequently intends to issue its writ of mandamus to stop the respondents from doing this.

26. In the entire process of the change of management, the petitioners were never taken into confidence. Their point of view was never considered necessary. They were never given any opportunity of hearing. On the contrary BEG & C and respondent no. 7 AWES, have shown documents before this Court justifying their unilateral action. Mr. P.R. Mullick, counsel for the respondent nos. 2 & 3 has argued that the society i.e. Brothers of St. Gabriel Province of Delhi have made immense profit from the school and they have opened another school in Roorkee and if they are really concerned about the petitioners then they can adjust them in their new school.

27. This is not the correct way of dealing with the issue. What has happened is not a simple change over from one management to another, which can only be seen on the basis of "profit and loss accounts" and "balance sheets." It is not a business commercial deal we are looking at. What we are looking at is a change over of management in a school which imparts education to school going children and therefore the "public element" in this transaction has always to be kept in mind.

> *28. We also have to appreciate the "legitimate expectations" of the petitioners who expect equity, fair-play and justice, from a public authority which respondent nos. 2, 3 and 7 indeed are and, therefore, they must meet such standards as a public authority ought to 15 have. The new management of the School, including respondent no.2, 3 and 7 are hereby directed not to change or vary the conditions of the petitioners to their disadvantage.*
>
> *29. The writ petition, consequently, succeeds. The order dated 28.02.2012, since it is only in the nature of letter, need not be quashed. All the same, a mandamus is hereby issued to the respondents not to change, vary or resent any of those conditions on which the petitioners (teaching as well as non teaching staff of the school) were appointed, to the disadvantage of the petitioners."*
>
> (Emphasis supplied)

19. Thus, the error is in para 27 when the learned single Judge says that since the school imparts education, the public element should be kept in mind. Undoubtedly, any institution imparting education discharges public duty and, therefore, public element may be involved. However, the learned single Judge overlooked the fact that the dispute between the school and the teachers and also the non-teaching staff is relating to their service conditions. In such circumstances, public element will not come into play.

F. APPEAL COURT JUDGMENT

20. We should also look into the impugned judgment and order passed by the Division Bench of the High Court affirming the above referred judgment of the learned single Judge. The relevant findings are as under:-

> *"16) The Parliament in its wisdom has enacted the Right of Children to Free and Compulsory Education Act, 2009, considering it as a fundamental right of children. The institution is affiliated to the Central Board of Secondary Education. The Central Government has accorded affiliation to the CBSE to impart education as per its syllabus. Thus, there is a discharge of public function of the institutions recognized and affiliated with CBSE. Though the learned Single Judge has recorded the reasons in holding that the writ petition is maintainable against the appellant but, at the cost of repetition, we deem it necessary to deal with the issue and after having considered the provisions of Article 12 and 226 of the Constitution of India and the catena of judgments, we are of considered opinion that the writ petition against the appellant was maintainable and has rightly been held maintainable by the learned Single Judge.*
>
> *17) Second issue before the learned Single Judge and this Court is - as to whether the cancellation of regular appointment of the teaching and non-teaching employees of the institution run by joint venture and giving the ad hoc appointment to the teachers is valid or not? The learned Single Judge on the pleadings of the parties and considering the fact that long back in the year 1967 created a joint venture for imparting the education and continued till 2012 and the*

appellant by unilateral action decided to break up the joint venture. The institute of brothers of St. Gabriel did not challenge their unilateral action, and departed quietly.

18) Admittedly, the appellant herein has unilaterally changed the service conditions of the writ petitioners by way of letter dated 28.02.2012 (copy Annexure 6 to the writ petition). A perusal of the pleadings of the rival parties would reveal that the appellant herein as well as the respondent Bengal Engineering Group and Center were not a party before learned Single Judge. The Deputy Commandant of the Bengal Engineering Group and Center is the de facto Chairman of the Bengal Engineering Group Benevolent Trust. The Union of India was also impleaded as a party respondent. The Commandant or the Deputy Commandant has no individual or personal capacity. Deputy Commandant has discharged his duties as de facto Chairman of the Bengal Engineering Group and Benevolent Trust (hereinafter referred to as Benevolent Trust). The Deputy Commandant has no independent power being an ex officio of the Benevolent Trust. The Deputy Commandant cannot work arbitrarily. Since the appellant and respondent Bengal Engineering Group Benevolent Trust were party and same relief was granted, the Bengal Engineering Group Benevolent Trust has not chosen to file the Special Appeal against the impugned judgment and order passed by learned Single Judge. It is true that the appellant being a Society has preferred this Special Appeal, but it was the decision of respondent no. 51 to issue letter dated 28.02.2012 (copy Annexure 6 to the writ petition). The service conditions of the teaching staff and non-teaching staff, which were continuing before terminating the legality of Institute of Brothers of St. Gabriel and taking over the entire management of the Institution by the Bengal Engineering Group Benevolent Trust. The learned Single Judge has considered elaborately that the

Benevolent Trust cannot change the service condition unilaterally and convert the regular services of the teaching and non-teaching staff and to issue ad hoc appointments to them. The appeal has been preferred by Army Welfare Education Society, whereof the institution was a joint venture of Brother of St. Gabrial and Bengal Engineering Group Benevolent Trust. The appellant may be an apex body (society) running the Army Schools throughout the country, but it cannot escape from the noble idea of creating Bengal Engineering Group Benevolent Trust for imparting education. Service benefits and status of the employee/employees could not be reduced without assigning sound reasons by the employer and without affording opportunity of hearing to them. We are also of the view that the services of the teaching and non- teaching staff cannot be changed from regular services to ad hoc services.

19. We have noticed that the Bengal Engineering Group Benevolent Trust is the aggrieved party, but appeal has not been preferred by it. We are of the opinion that the appellants cannot be said to be aggrieved persons and appeal at their behest is not maintainable.

20) The affairs of Bengal Engineering Group and Center come within the control of the Ministry of Defence, Union of India. Deputy Commandant has no authority to engage a private lawyer without the permission of Union of India. The purpose of granting permission to engage a private lawyer is also a serious issue, but for the reasons best reason to the officer concerned a private lawyer has been appointed by the appellant herein, which is discharging a public duty, to contest the aforementioned matters. Deputy Commandant of Bengal Engineering Group and Center holding a post in the Indian Army, which comes within the control of Ministry of Defence, Union of India ought not to have

engaged a private lawyer without permission of the Union of India.

21) We find no illegality, perversity or jurisdiction error in the impugned judgment passed by learned Single Judge dated 05.08.2012, allowing the writ petition, filed by the teaching and non- teaching staff of the Institution. Since the record of the writ petitions which were pending before the learned Single Judge were called by this Court considering the common question involved in the special appeals as well as in the writ petitions which were pending before the learned single judge, we are of the view that aforementioned special appeals are liable to be dismissed. The same are hereby dismissed. The writ petitions mentioned aforesaid are also disposed of accordingly as the relief sought in the writ petitions has already been adjudicated in the appeals."

G. ANALYSIS

21. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the High Court was justified in entertaining the writ petition filed by the respondents herein under Article 226 of the Constitution against the appellant society?

22. From the materials on record, the following is discernible:-

1) In 1962, the Commandant of Bengal Engineering Group and Centre ("BEGC"), by virtue of his position as *ex officio* Chairman of the Bengal Engineering Group Benevolent Trust ("BEGBT") granted land to the Institute of Brothers of St Gabriel's ("IBSG"), an unaided private minority society, for running a school.
2) On 13.07.1967, the BEGBT executed a formal lease agreement with IBSG with respect to the land situated at Cantonment B-31, including the School Building, playground and Bungalow No.1, for the establishment of a Higher Secondary School under the Board of All India Higher Secondary School in Delhi, or any other similar Government Board. The school so formed was named as the Bengal Sappers St Gabriel's Academy, Roorkee ("BSSGA").
3) On 29.04.1983, the Army Welfare Education Society was registered under the Societies Registration Act.
4) On 20.04.1997, the BEGBT and IBSG respectively renewed the lease agreement dated 13.07.1967 for a further period of 15 years i.e. up to 31.03.2012.

5) On 26.04.2010, the Chairman of BEGBT took a policy decision not to renew the lease agreement dated 20.04.1997. BEGBT, by its letter addressed to the Provincial Superior, IBSG, communicated that the lease would not be renewed beyond the stipulated period and requested IBSG to consider the letter as an advance notice and suitably apprise all the students and their parents so that they get adequate time to make alternate arrangements by 31.03.2012 i.e. when the lease was set to expire.

6) On 15.05.2010, IBSG, by its letter addressed to the Deputy Commandant, BEGC, requested to furnish information as regards the non- renewal of the lease dated 20.04.1997.

7) On 22.06.2010, BEGC, in its reply to IBSG's letter dated 15.05.2010, stated that there was a proposal under consideration to establish an Army School at the location that was leased to IBSG, and again requested IBSG to inform the Board and the parents about the said proposal.

8) In July, 2021, BEGC initiated a proposal to establish an Army Public School under the aegis of Army Welfare

Education Society (appellant) at the place that was then leased to IBSG.

9) On 23.02.2012, the appellant society granted approval to establish Army Public School No.2 at Roorkee ("APS No.2"), on the land that was earlier leased to IBSG. The approval dated 23.02.2012 laid down the modalities for adjusting the existing staff at BSSGA into APS No.2, stating that-

> *"(g) The process of selecting Principal and teachers must be completed by March 12 and they should be in position by 01 Apr 2012. Service of the teachers and administrative staff of St Gabriel's Academy School should be terminated before the establishment of APS No 2 Roorkee. Existing competent teachers meeting the CBSE educational qualifications may be considered for appointment on ad-hoc basis for one year after a gap of minimum of seven days from the date of termination of service. The condition of holding an AWES Score Card for appointment as teachers may be relaxed their case. They should be advised to appear and qualify in All India Written Test scheduled on second Sunday of Dec 2012. The terms and conditions for their employment should accordingly be formulated."*

10) On 28.02.2012, BEGC, by its letter to IBSG, communicated the conditions laid down in the approval letter dated 23.02.2012.

11) On 14.03.2012 the respondents herein filed Writ Petition No. 341 of 2012 before the High Court of Uttarakhand at Nainital seeking a direction to quash the letter dated 28.02.2012 and also to direct the appellant society to continue their services on the same terms and conditions provided to them by the IBSG.

12) It appears that the appellant society is a purely unaided private society established for the purpose of imparting education to the children of the army personnel including the widows and ex-servicemen.

i. <u>Position of Law</u>

23. We begin with the decision of this Court in ***Executive Committee of Vaish Degree College v. Lakshmi Narain***, AIR 1976 SC 888. This is one of the landmark decisions of this Court as this case discussed and considered all the previous decisions and the same has been referred to and relied upon by this Court till this date. This Court held that a contract of personal service cannot ordinarily be enforced specifically. Three exceptions were set out as well recognized : (1) Where a public servant is sought to be removed from service in contravention of the provisions

of Article 311 of the Constitution of India; (2) Where a worker is sought to be reinstated under the Industrial Law; (3) Where a statutory body acts in breach or violation of the mandatory-provisions of the statute. A statutory body was defined in that case as one which was created by or under a statute and owed its existence to a statute. It was held that an institution governed by certain statutory provisions for its proper maintenance and administration would not be a statutory body. The test prescribed was whether the institution would exist in the absence of a statute.

24. In ***J. Tiwari v. Jawala Devi Vidya Mandir*****,** (1979) 4 SCC 160, it was held that the rights and obligations of an employee of a private institution are governed by the terms of the contract between the parties. It was also observed that the regulations of the University or the provisions of the Educational Code framed by the State Government may be applicable to the institution and if the provisions thereof are violated, the University may be entitled to disaffiliate the institution. But that would not, however, make that the institution a public or a statutory body.

25. In ***Dipak Kumar Biswas v. Director of Public Instruction***, 1987 (2) SCC 252, the appellant before this Court instituted a suit for declaration that he continued to be in service in Lady Keane Girls College, Shillong and for an injunction. His services were terminated by the College on the ground that the Director of Public Instruction had not approved of his appointment. The trial court dismissed the suit. The first appellate court allowed the appeal of the plaintiff and granted a decree as prayed for. The High Court, while holding that there was no necessity for the approval by the Director of Public Instruction as the Assam College Management Rules were not adopted by the State of Meghalaya, held that reinstatement of the plaintiff in service was not possible as it could be granted only to persons belonging to the categories of (1) Government servants (2) Industrial workmen and (3) Employees of statutory bodies. Consequently, the High Court granted a decree for damages only. The aggrieved plaintiff took the matter on appeal to this Court. Following the view token in ***Vaish Degree College v. Lakshmi Narain*** (supra), this Court held that a contract of service could not be enforced specifically. Then the question to

be considered was whether the college in that case which was admittedly receiving aid from the Government and was governed by the regulations of the University was a statutory body. The Court answered in the negative and rejected the claim for reinstatement. The Court observed as follows:-

> *"The law enunciated in these decisions stand fully attracted to this case also. Even though the Lady Keane Girls College may be governed by the statutes of the University and the Education Code framed by the Government of Meghalaya and even though the college may be receiving financial aid from the Government it would not be a statutory body because it has not been created by any statute and its existence is not dependent upon any statutory provision. Ultimately the Supreme Court granted additional damages to the appellant."*

26. In ***Tekraj v. Union of India***, 1988 (1) SCC 236, the question was whether the Institute of Constitutional and Parliamentary studies registered under the Societies Registration Act, 1860 was a "State" within the meaning of Article 12 of the Constitution of India. After tracing the case law on the subject the Court observed as follows:-

> *"Democracy pre-supposes certain conditions or its successful working. It is necessary that there must be a deep sense of understanding, mutual confidence*

and tolerance and regard and acceptance of the views of others. In the early years of freedom, the spirit of sacrifice and a sense of obligation to the leadership that had helped the dream of freedom to materialise had been accepted. The emergence of a new generation within less than two decades of independency gave rise to a feeling that the people's representatives in the legislatures required the acquisition of the appropriate democratic ideas and spirit. ICPS was born as a voluntary organisation to fulfil this requirement. At the inception it was certainly not a governmental organisation and it has not been the case of the parties in their pleadings nor have we been told at the bar during the long arguments that had been advanced that the objects of ICPS are those which are a State obligation to fulfil. The Society was thus born out of a feeling that there should be a voluntary association mostly consisting of members of the two Houses of Parliament with some external support to fulfil the objects which were adopted by the Society. The objects of the Society were not governmental business but were certainly the aspects which were expected to equip Members of Parliament and the State Legislatures with the requisite knowledge and experience for better functioning. Many of the objects adopted by the Society were not confined to the two Houses of Parliament and were intended to have an impact on society at large.

The Memorandum of the Society permitted acceptance of gifts, donations and subscriptions. There is material to show that the Ford Foundation, a US based Trust, had extended support for sometime. Undoubtedly, the annual contribution from the Government has been substantial and it would not be

wrong to say that they perhaps constitute the main source of funding, yet some money has been coming from other sources. In later years, foreign funding came to be regulated and, therefore it became necessary to provide that without Government clearance, like any other institution, ICPS was not to receive foreign donation. No material has been placed before us for the stand that the Society was not entitled to receive contributions from any indigenous source without Government sanction. Since Government moneys has been coming, the usual conditions attached to Government grants have been applied and enforced. If the Society's affairs were really intended to be carried on as part of the Lok Sabha or Parliament as such, the manner of functioning would have been different. The accounts of the Society are separately maintained and subject to audit in the same way as the affairs of societies receiving Government grants are to be audited. Government usually impose certain conditions and restrictions when grants are made. No exception has been made in respect of the Society and the mere fact that such restrictions are made is not a determinative aspect.

Considerable attempt has been made by Mr. Rao, learned Counsel for the appellant, to show that in the functioning of the Society there is deep and pervasive control of Government. We have examined meticulously the correspondence and the instances where control was attempted to be exercised or has, as a fact, been exercised but these again are features which appear to have been explained away."

27. In spite of the above facts and circumstances, this Court held that the institute was not a "State" or State instrumentality or other authority.

28. If the Authority/Body can be treated as a "State" within the meaning of Article 12 of the Constitution of India, then in such circumstances, it goes without saying that a writ petition under Article 226 would be maintainable against such an Authority/Body for the purpose of enforcement of fundamental and other legal rights. Therefore, the definition contained in Article 12 is for the purpose of application of the provisions contained in Part III. Article 226 of the Constitution, which deals with powers of the High Courts to issue certain writs, *inter alia*, stipulates that every High Court has the power to issue directions, orders or writs to any person or authority, including, in appropriate cases, any Government, for the enforcement of any of the rights conferred by Part III and for any other purpose.

29. So far as Article 12 of the Constitution is concerned, the "State" includes "all local and other Authorities within the territory of India or under the control of the Government of India". The debate on the question as to which body would

qualify as “other authority” & the test/principles applicable for ascertaining as to whether a particular body can be treated as “other authority” has been never ending. If such an authority violates the fundamental right or other legal rights of any person or citizen (as the case may be), a writ petition can be filed under Article 226 of the Constitution invoking the extraordinary jurisdiction of the High Court and seeking appropriate direction, order or writ. However, under Article 226 of the Constitution, the power of the High Court is not limited to the Government or authority which qualifies to be “State” under Article 12. Power is extended to issue directions, orders or writs “to any person or authority”. Again, this power of issuing directions, orders or writs is not limited to enforcement of fundamental rights conferred by Part III, but also “for any other purpose”. Thus, power of the High Court takes within its sweep more “authorities” than stipulated in Article 12 and the subject-matter which can be dealt with under this Article is also wider in scope.

30. There are three decisions of this Court we must look into and discuss.

31. The first judgment is ***Shri Anadi Mukta Sadguru Shree Muktajee Vandasjiswami Suvarna Jayanti Mahotsav Smarak Trust & Ors. v. V. R. Rudani & Ors.*** reported in (1989) 2 SCC 691 and the other two judgments, we are talking about are ***K. Krishnamacharyulu & Ors. v. Sri Venkateswara Hindu College of Engineering & Anr***. reported in 1997 (3) SCC 571 and ***Satimbla Sharma v. St. Paul's Senior Secondary School***, reported in (2011) 13 SCC 760.

32. In ***Shri Anadi Mukta Sadguru*** (supra), dispute arose between the Trust which was managing and running science college and teachers of the said college. It pertained to payment of certain employment related benefits like basic pay, etc. The matter was referred to the Chancellor of Gujarat University for his decision. The Chancellor passed an award, which was accepted by the University as well as the State Government and a direction was issued to all affiliated colleges to pay their teachers in terms of the said award. However, the aforesaid Trust running the science college did not implement the award. Teachers filed the writ petition seeking mandamus and direction to the Trust to pay them their dues of salary, allowances,

provident fund and gratuity in accordance therewith. It is in this context an issue arose as to whether the writ petition under Article 226 of the Constitution was maintainable against the said Trust which was admittedly not a statutory body or authority under Article 12 of the Constitution as it was a private Trust running an educational institution. The High Court held that the writ petition was maintainable and the said view was upheld by this Court in the aforesaid judgment. The discussion which is relevant for our purposes is contained in paras 14 to 19. However, we would like to reproduce paras 14, 16 and 19, which read as under:-

> *"14. 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 appellant 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. [See The Evolving Indian Administrative Law by M.P. Jain (1983) p. 266.] 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.

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

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19. The term 'authority' used in Article 226, in the context, must receive a liberal meaning like 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)

33. In para 14, the Court spelled out two exceptions to the writ of mandamus viz. (*i*) if the rights are purely of a private character, no mandamus can issue; and (*ii*) if the management of the college is purely a private body "with no public duty", mandamus will not lie. The Court clarified that since the Trust in the said case was an aided institution, because of this reason, it discharges public function, like government institution, by way of imparting education to students, more particularly when rules and regulations of the affiliating university are applicable to such an institution, being an aided institution. In such a situation, the Court held that the service conditions of academic staff were not purely of a private character as the staff had super-added protection by university's decision creating a legal right and duty

relationship between the staff and the management. Further, the Court explained in para 19 that the term "authority" used in Article 226, in the context, would receive a liberal meaning unlike the term in Article 12, inasmuch as Article 12 was relevant only for the purpose of enforcement of fundamental rights under Article 32, whereas Article 226 confers power on the High Courts to issue writs not only for enforcement of fundamental rights but also non-fundamental rights. What is relevant is the dicta of the Court that the term "authority" appearing in Article 226 of the Constitution would cover any other person or body performing public duty. The guiding factor, therefore, is the nature of duty imposed on such a body, namely, public duty to make it exigible to Article 226.

34. In ***K. Krishnamacharyulu*** (supra), this Court again emphasised that where there is an interest created by the Government in an institution to impart education, which is a fundamental right of the citizens, the teachers who impart the education get an element of public interest in performance of their duties. In such a situation, remedy provided under Article 226 would be available to the teachers.

35. However, both the decisions referred to above pertain to educational institutions and in the said cases, the function of imparting education was treated as the performance of the public duty, that too by those bodies where, the aided institutions were discharging the said functions like Government institutions and the interest was created by the Government in such institutions to impart education.

36. In ***Satimbla Sharma*** (supra), the school therein was initially established as a mission school by the respondent No. 2. The school adopted the 10+2 system in 1993 and got affiliated to the Himachal Pradesh Board of School Education. Before independence in 1947, the school was receiving grant-in-aid from the British Indian Government and thereafter from the Government of India up to 1950. Between 1951 and 1966, the school received grant-in-aid from the State Government of Punjab. After the State of Himachal Pradesh was formed, the school received grant-in-aid from the Government of Himachal Pradesh for the period between 1967 and 1976. From the year 1977-1978, the Government of Himachal Pradesh stopped the grant-in-aid. In such circumstances, the teachers of the school

were paid less than the teachers of the Government schools and the Government-aided schools in the State of Himachal Pradesh. This led to filing of a writ petition in the High Court of Himachal Pradesh seeking a direction to pay the salary and allowances at par with the teachers of Government schools and the Government-aided schools. A learned single Judge of the High Court allowed the writ petition and directed the respondents therein to pay to the writ petitioners therein salary and allowances at par with their counterparts working in the Government schools from the dates they were entitled to and at the rates admissible from time to time. The respondent Nos. 1 and 2 therein preferred letters patent appeal before the Division Bench of the High Court. The appeal came to be allowed and the writ petition filed by the teachers was dismissed. In such circumstances referred to above, the litigation travelled to this Court. This Court, while disposing of the appeal, held as under:-

> *"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.

26. In K. Krishnamacharyulu v. Sri Venkateswara Hindu College of Engg., (1997) 3 SCC 571 : 1997 SCC (L&S) 841, relied upon by the learned counsel for the appellants, executive instructions were issued by the Government that the scales of pay of Laboratory Assistants as non-teaching staff of private colleges shall be on a par with the government employees and this Court held that even though there were no statutory rules, the Laboratory Assistants as non-teaching staff of private college were entitled to the parity of the pay scales as per the executive instructions of the Government and the writ jurisdiction of the High Court under Article 226 of the Constitution is wide enough to issue a writ for payment of pay on a par with government employees. In the present case, there are no executive instructions issued by the Government requiring private schools to pay the same salary and allowances to their teachers as are being paid to teachers of government schools or government-aided schools.

27. We cannot also issue a mandamus to Respondents 1 and 2 on the ground that the conditions of provisional affiliation of schools prescribed by the Council for the Indian School Certificate Examinations stipulate in Clause (5)(b) that the salary and allowances and other benefits of the staff of the affiliated school must be comparable to that prescribed by the State Department of Education because such conditions for provisional affiliation are not statutory provisions or executive instructions, which are enforceable in law. Similarly, we cannot issue a mandamus to give effect to the recommendations of the Report of Education Commission 1964-1966 that the scales of pay of school teachers belonging to the same category but working under different managements such as Government, local bodies or private managements should be the same, unless the recommendations are incorporated in an executive

instruction or a statutory provision. We, therefore, affirm the impugned judgment of the Division Bench of the High Court.

28. We, however, find that the 2009 Act has provisions in Section 23 regarding the qualifications for appointment and terms and conditions of service of teachers and sub-section (3) of Section 23 of the 2009 Act provides that the salary and allowances payable to, and the terms and conditions of service of, teachers shall be such as may be prescribed. Section 38 of the 2009 Act empowers the appropriate Government to make rules and Section 38(2)(l) of the 2009 Act provides that the appropriate Government, in particular, may make rules prescribing the salary and allowances payable to, and the terms and conditions of service of teachers, under sub-section (3) of Section 23. Section 2(a) defines "appropriate Government" as the State Government within whose territory the school is established.

29. The State of Himachal Pradesh, Respondent 3 in this appeal, is thus empowered to make rules under sub-section (3) of Section 23 read with Section 38(2)(l) of the 2009 Act prescribing the salary and allowances payable to, and the terms and conditions of service of, teachers. Article 39(d) of the Constitution provides that the State shall, in particular, direct its policy towards securing that there is equal pay for equal work for both men and women. Respondent 3 should therefore consider making rules under Section 23 read with Section 38(2)(l) of the 2009 Act prescribing the salary and allowances of teachers keeping in mind Article 39(d) of the Constitution as early as possible." (Emphasis supplied)

37. Thus, the dictum as laid in ***Satimbla Sharma*** (supra) is clear. In the absence of any statutory provisions requiring a private unaided school to pay to its teachers the same salary and

allowances as payable to the teachers of the Government schools, a mandamus cannot be issued to pay to the teachers of private recognised unaided schools the same salary and allowances as payable to the teachers of Government institutions. In the case at hand, the respondents are being paid the same salary and allowances as being paid to the teachers and non-teaching staff appointed by the appellant society.

38. In one of the recent pronouncements of this Court in the case of ***St. Mary's Education Society & Anr. v. Rajendra Prasad Bhargava & Ors.*** reported in (2023) 4 SCC 498, to which one of us (J.B. Pardiwala, J.) was a member, the entire law on the subject has been discussed threadbare. In the said case, this Court held that while a private unaided minority institution might be touching the spheres of public function by performing a public duty, its employees have no right of invoking the writ jurisdiction of the High Court under Article 226 of the Constitution in respect of matters relating to service where they are not governed or controlled by the statutory provision.

39. In the said case, the following two questions fell for the consideration of the Court:-

(a) *Whether a writ petition under Article 226 of the Constitution of India is maintainable against a private unaided minority institution?*

(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?*

40. This Court ultimately held as under:-

"29. Respondent 1 herein has laid much emphasis on the fact that at the time of his appointment in the school, the same was affiliated to the Madhya Pradesh State Board. It is his case that at the relevant point of time the school used to receive the grant-in-aid from the State Government of Madhya Pradesh. Later in point of time, the school came to be affiliated to CBSE. The argument of Respondent 1 seems to be that as the school is affiliated to the Central Board i.e. CBSE, it falls within the ambit of "State" under Article 12 of the Constitution. The school is affiliated to CBSE for the purpose of imparting elementary education under the Right of Children to Free and Compulsory Education Act, 2009 (for short "the 2009 Act"). As

Appellant 1 is engaged in imparting of education, it could be said to be performing public functions. To put it in other words, Appellant 1 could be said to be performing public duty. Even if a body performing public duty is amenable to the writ jurisdiction, all its decisions are not subject to judicial review. Only those decisions which have public element therein can be judicially reviewed under the writ jurisdiction. If the action challenged does not have the public element, a writ of mandamus cannot be issued as the action could be said to be essentially of a private character.

30. We may at the outset state that CBSE is only a society registered under the Societies Registration Act, 1860 and the school affiliated to it is not a creature of the statute and hence not a statutory body. The distinction between a body created by the statute and a body governed in accordance with a statute has been explained by this Court in ***Executive Committee of Vaish Degree College v. Lakshmi Narain****, (1976) 2 SCC 58, as follows:- (SCC p. 65, para 10)*

> *"10. … It is, therefore, clear that there is a well marked distinction between a body which is created by the statute and a body which after having come into existence is governed in accordance with the provisions of the statute. In other words the position seems to be that the institution concerned must owe its very existence to a statute which would be the fountainhead of its powers. The question in such cases to be asked is, if there is no statute would the institution have any legal existence. If the answer is in the negative, then undoubtedly it is a statutory body, but if the institution has a separate existence of its own without any reference to the statute concerned but is*

merely governed by the statutory provisions it cannot be said to be a statutory body."

31. As stated above, the school is affiliated to CBSE for the sake of convenience, namely, for the purpose of recognition and syllabus or the courses of study and the provisions of the 2009 Act and the Rules framed thereunder.

32. The contention canvassed by Respondent 1 is that a writ petition is maintainable against the Committee of Management controlling the affairs of an institution (minority) run by it, if it violates any rules and bye-laws laid down by CBSE. First, as discussed above, CBSE itself is not a statutory body nor the regulations framed by it have any statutory force. Secondly, the mere fact that the Board grants recognition to the institutions on certain terms and conditions itself does not confer any enforceable right on any person as against the Committee of Management.

33. In ***Regina v. St. Aloysius Higher Secondary School,*** *(1972) 4 SCC 188 : AIR 1971 SC 1920, this Court held that the mere fact that an institution is recognised by an authority, does not itself create an enforceable right to an aggrieved party against the Management by a teacher on the ground of breach or non-compliance of any of the Rules which was part of terms of the recognition. It was observed as under:-*

"24. … The Rules thus govern the terms on which the Government would grant recognition and aid and the Government can enforce these rules upon the management. But the enforcement of such rules is a matter between the Government and the management, and a third party, such as teacher aggrieved by some order of the management cannot derive from the rules

any enforceable right against the management on the ground of breach or non-compliance of any of the rules."

34. In ***Anita Verma v. D.A.V. College Management Committee, Unchahar, Rai Bareilly****, (1992) 1 UPLBEC 30:-*

"… 30. Where the services of a teacher were terminated, the Court held that the writ petition under Article 226 is not maintainable as the institution cannot be treated as the instrumentality of the State. The matter was considered in detail in Harbans Kaur v. Guru Tegh Bahadur Public School [Harbans Kaur v. Guru Tegh Bahadur Public School, 1992 SCC OnLine All 444 : 1992 Lab IC 2070], wherein the services of the petitioner were terminated by the Managing Committee of the institution recognised by CBSE. It was held that the Affiliation Bye-laws framed by CBSE have no statutory force. The Court under Article 226 of the Constitution of India can enforce compliance of statutory provision against a committee of management as held in a Full Bench decision of this Court in Aley Ahmad Abidi v. District Inspector of Schools [Aley Ahmad Abidi v. District Inspector of Schools, 1976 SCC OnLine All 325 : AIR 1977 All 539]. The Affiliation Bye-laws of CBSE having no statutory force, the only remedy against the aggrieved person is to approach CBSE putting his grievances in relation to the violation of the Affiliation Bye-laws by the institution."

35. Thus, where a teacher or non-teaching staff challenges the action of Committee of Management

that it has violated the terms of contract or the rules of the Affiliation Bye-laws, the appropriate remedy of such teacher or employee is to approach CBSE or to take such other legal remedy available under law. It is open to CBSE to take appropriate action against the Committee of Management of the institution for withdrawal of recognition in case it finds that the Committee of Management has not performed its duties in accordance with the Affiliation Byelaws.

36. It needs no elaboration to state that a school affiliated to CBSE which is unaided is not a State within Article 12 of the Constitution of India [see ***Satimbla Sharma v. St Paul's Senior Secondary School****, (2011) 13 SCC 760 : (2012) 2 SCC (L&S) 75 . Nevertheless the school discharges a public duty of imparting education which is a fundamental right of the citizen [see* ***K. Krishnamacharyulu v. Sri Venkateswara Hindu College of Engineering****, (1997) 3 SCC 571 : 1997 SCC (L&S) 841. The school affiliated to CBSE is therefore an "authority" amenable to the jurisdiction under Article 226 of the Constitution of India [see* ***Binny Ltd. v. V. Sadasivan****, (2005) 6 SCC 657 : 2005 SCC (L&S) 881]]. However, a judicial review of the action challenged by a party can be had by resort to the writ jurisdiction only if there is a public law element and not to enforce a contract of personal service. A contract of personal service includes all matters relating to the service of the employee — confirmation, suspension, transfer, termination, etc. [see* ***Apollo Tyres Ltd. v. C.P. Sebastian****, (2009) 14 SCC 360].*

37. This Court in ***K.K. Saksena v. International Commission on Irrigation & Drainage****, (2015) 4 SCC 670, after an exhaustive review of its earlier decisions on the subject, held as follows:- (SCC pp. 692 & 696, paras 43 & 52)*

"43. What follows from a minute and careful reading of the aforesaid judgments of this Court is that if a person or authority is "State" within the meaning of Article 12 of the Constitution, admittedly a writ petition under Article 226 would lie against such a person or body. However, we may add that even in such cases writ would not lie to enforce private law rights. There are a catena of judgments on this aspect and it is not necessary to refer to those judgments as that is the basic principle of judicial review of an action under the administrative law. The reason is obvious. A private law is that part of a legal system which is a part of common law that involves relationships between individuals, such as law of contract or torts. Therefore, even if writ petition would be maintainable against an authority, which is "State" under Article 12 of the Constitution, before issuing any writ, particularly writ of mandamus, the Court has to satisfy that action of such an authority, which is challenged, is in the domain of public law as distinguished from private law.

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52. It is trite that contract of personal service cannot be enforced. There are three exceptions to this rule, namely:

(i) when the employee is a public servant working under the Union of India or State;

(ii) when such an employee is employed by an authority/body which is a State within the meaning of Article 12 of the Constitution of India; and

(iii) when such an employee is "workmen" within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 and raises a dispute regarding his termination by invoking the machinery under the said Act.

In the first two cases, the employment ceases to have private law character and "status" to such an employment is attached. In the third category of cases, it is the Industrial Disputes Act which confers jurisdiction on the Labour Court/Industrial Tribunal to grant reinstatement in case termination is found to be illegal."

38. The following decisions have been adverted to in ***K.K. Saksena*** *(supra):-*

1. ***Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani,*** *(1989) 2 SCC 691*

2. ***G. Bassi Reddy v. International Crops Research Institute****, (2003) 4 SCC 225,*

3. ***Praga Tools Corpn. v. C.A. Imanual****, (1969) 1 SCC 585,*

4. ***Federal Bank Ltd. v. Sagar Thomas****, (2003) 10 SCC 733.*

39. This Court in ***Janet Jeyapaul v. SRM University*** *(2015) 16 SCC 530, held that when a private body exercises its public functions even if it is not a State, the aggrieved person has a remedy, not only under the ordinary law, but also by way of a writ petition under Article 226 of the Constitution. In* ***Binny Ltd.*** *(supra), this Court held that Article 226 of the Constitution is couched in such a way that a writ of mandamus could be issued even against a private authority. However, such private authority must be discharging a public function and that the*

decision sought to be corrected or enforced must be in the discharge of public function.

40. Paragraph 11 of the judgment in ***Binny Ltd****. (supra) is reproduced below:- (SCC pp. 665-66)*

> *"11. Judicial review is designed to prevent the cases of abuse of power and neglect of duty by public authorities. However, under our Constitution, Article 226 is couched in such a way that a writ of mandamus could be issued even against a private authority. However, such private authority must be discharging a public function and that the decision sought to be corrected or enforced must be in discharge of a public function. The role of the State expanded enormously and attempts have been made to create various agencies to perform the governmental functions. Several corporations and companies have also been formed by the Government to run industries and to carry on trading activities. These have come to be known as public sector undertakings. However, in the interpretation given to Article 12 of the Constitution, this Court took the view that many of these companies and corporations could come within the sweep of Article 12 of the Constitution. At the same time, there are private bodies also which may be discharging public functions. It is difficult to draw a line between public functions and private functions when it is being discharged by a purely private authority. A body is performing a "public function" when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so. Bodies therefore exercise public functions when they intervene or*

participate in social or economic affairs in the public interest." *(Emphasis supplied)*

41. This Court considered various of its other decisions to examine the question of public law remedy under Article 226 of the Constitution. This Court observed in ***Binny Ltd.*** *(supra) as under:- (SCC p. 673, para 29)*

> *"29. Thus, it can be seen that a writ of mandamus or the remedy under Article 226 is pre-eminently a public law remedy and is not generally available as a remedy against private wrongs. It is used for enforcement of various rights of the public or to compel the public/statutory authorities to discharge their duties and to act within their bounds. It may be used to do justice when there is wrongful exercise of power or a refusal to perform duties. This writ is admirably equipped to serve as a judicial control over administrative actions. This writ could also be issued against any private body or person, specially in view of the words used in Article 226 of the Constitution. However, the scope of mandamus is limited to enforcement of public duty. The scope of mandamus is determined by the nature of the duty to be enforced, rather than the identity of the authority against whom it is sought. If the private body is discharging a public function and the denial of any right is in connection with the public duty imposed on such body, the public law remedy can be enforced. The duty cast on the public body may be either statutory or otherwise and the source of such power is immaterial, but, nevertheless, there must be the public law element in such action. Sometimes, it is*

difficult to distinguish between public law and private law remedies."

(Emphasis supplied)

*42. In the penultimate paragraph, this Court ruled as under:- (**Binny** case, SCC p. 674, para 32)*

> *"32. Applying these principles, it can very well be said that a writ of mandamus can be issued against a private body which is not "State" within the meaning of Article 12 of the Constitution and such body is amenable to the jurisdiction under Article 226 of the Constitution and the High Court under Article 226 of the Constitution can exercise judicial review of the action challenged by a party. <u>But there must be a public law element and it cannot be exercised to enforce purely private contracts entered into between the parties.</u>" (Emphasis supplied)*

43. In the background of the above legal position, it can be safely concluded that power of judicial review under Article 226 of the Constitution of India can be exercised by the High Court even if the body against which an action is sought is not State or an authority or an instrumentality of the State but there must be a public element in the action complained of.

44. A reading of the above extract shows that the decision sought to be corrected or enforced must be in the discharge of a public function. No doubt, the aims and objective of Appellant 1 herein are to impart education, which is a public function. However, the issue herein is with regard to the termination of service of Respondent 1, which is basically a service contract. A body is said to be performing a public function when it seeks to achieve some collective benefit for the public or a section of the public and is

accepted by the public or that section of the public as having authority to do so.

45. In the case of ***Committee of Management, Delhi Public School v. M.K. Gandhi*** *, reported in (2015) 17 SCC 353, this Court held that no writ is maintainable against a private school as it is not a "State" within the meaning of Article 12 of the Constitution of India.*

46. In ***Trigun Chand Thakur v. State of Bihar*** *, reported in (2019) 7 SCC 513, this Court upheld the view of a Division Bench of the Patna High Court which held that a teacher of privately managed school, even though financially aided by the State Government or the Board, cannot maintain a writ petition against an order of termination from service passed by the Management.*

47. In ***Satimbla Sharma*** *(supra), this Court held that the 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 private schools.*

48. The Full Bench of the Allahabad High Court in ***Roychan Abraham v. State of U.P.****, AIR 2019 All 96, after taking into consideration various decisions of this Court, held as under:-*

> *"38. Even if it be assumed that an educational institution is imparting public duty, the act complained of must have direct nexus with the discharge of public duty. It is undisputedly a public law action which*

confers a right upon the aggrieved to invoke 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 petition under Article 226. Wherever Courts have intervened in exercise of jurisdiction under Article 226, either the service conditions were regulated by 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." (Emphasis supplied)

49. We may refer to and rely upon one order passed by this Court in ***S.K. Varshney v. Principal, Our Lady of Fatima Higher Secondary School****, (2023) 4 SCC 539, in the Civil Appeal No. 8783-8784 of 2003 dated July 19, 2007, in which the dispute was one relating to the retirement age of a teacher working in an unaided institution. This Court, while dismissing the appeal preferred by the employee, held as under:-*

"4. Both the petitions were dismissed by the learned Single Judge on the ground that no writ would lie against unaided private institutions and the writ petitions were not maintainable.

5. Aggrieved thereby, writ appeals have been filed before the Division Bench without any result. The Division Bench held [S.K. Varshney v. Our Lady of Fatima Higher Secondary School, 1999 SCC OnLine All 908] that the writ petitions are not maintainable against a private institute. Aggrieved thereby, these appeals have been filed.

6. The counsel for the appellant relied on a decision rendered by this Court in K. Krishnamacharyulu v. Sri Venkateswara Hindu College of Engg., (1997) 3 SCC 571. He particularly relied on the observation made by this Court in para 4 of the order that when an element of public interest is created and the institution is catering to that element, the teacher, being the arm of the institution, is also entitled to avail of the remedy provided under Article 226.

7. This Court in Sushmita Basu v. Ballygunge Siksha Samity, (2006) 7 SCC 680 : 2006 SCC (L&S) 1741] in which one of us (Sema, J.) is a party, after considering the aforesaid judgment has distinguished the ratio by holding that the writ under Article 226 of the Constitution against a private educational institute would be justified only if a public law element is involved and if it is only a private law remedy no writ petition would lie. In the present cases, there is no question of public law element involved inasmuch as the grievances of the appellants are of personal nature.

8. We, accordingly, hold that writ petitions are not maintainable against the private institute. There is no infirmity in the order passed by the learned Single Judge and affirmed by the Division Bench. These appeals are devoid of merit and are, accordingly, dismissed. No costs."

(Emphasis supplied)

50. We may also refer to and rely upon the decision of this Court in ***Vidya Ram Misra v. Shri Jai***

***Narain College**, (1972) 1 SCC 623 : AIR 1972 SC 1450. The appellant therein filed a writ petition before the Lucknow Bench of the High Court of Allahabad challenging the validity of a resolution passed by the Managing Committee of Shri Jai Narain College, Lucknow, an associated college of Lucknow University, terminating his services and praying for issue of an appropriate writ or order quashing the resolution. A learned Single Judge of the High Court finding that in terminating the services, the Managing Committee acted in violation of the principles of natural justice, quashed the resolution and allowed the writ petition. The Managing Committee appealed against the order. A Division Bench of the High Court found that the relationship between the college and the appellant therein was that of master and servant and that even if the service of the appellant had been terminated in breach of the audi alteram partem rule of natural justice, the remedy of the appellant was to file a suit for damages and not to apply under Article 226 of the Constitution for a writ or order in the nature of certiorari and that, in fact, no principle of natural justice was violated by terminating the services of the appellant. The writ petition was dismissed. In appeal, this Court upheld the decision of the High Court holding that the lecturer cannot have any cause of action on breach of the law but only on breach of the contract, hence he has a remedy only by way of suit for damages and not by way of writ under Article 226 of the Constitution.*

*51. In **Vidya Ram Misra** (supra), this Court observed thus:- (SCC p. 629, paras 12-13)*

> *"12. Whereas in **P.R.K. Jodh v. A.L. Pande**, (1965) 2 SCR 713] , the terms and conditions of service embodies in Clause 8(vi)(a) of the "College Code" had the force of law apart from the contract and conferred rights on the appellant there, here the terms*

and conditions mentioned in Statute 151 have no efficacy, unless they are incorporated in a contract. Therefore, appellant cannot found a cause of action on any breach of the law but only on the breach of the contract. As already indicated, Statute 151 does not lay down any procedure for removal of a teacher to be incorporated in the contract. So, Clause 5 of the contract can, in no event, have even a statutory flavour and for its breach, the appellant's remedy lay elsewhere.

13. Besides, in order that the third exception to the general rule that no writ will lie to quash an order terminating a contract of service, albeit illegally, as stated in ***S.R. Tewari v. District Board****, (1964) 3 SCR 55 : AIR 1964 SC 1680], might apply, it is necessary that the order must be the order of a statutory body acting in breach of a mandatory obligation imposed by a statute. The college, or the Managing Committee in question, is not a statutory body and so the argument of Mr Setalvad that the case in hand will fall under the third exception cannot be accepted. The contention of counsel that this Court has sub silentio sanctioned the issue of a writ under Article 226 to quash an order terminating services of a teacher passed by a college similarly situate in* ***P.R.K. Jodh****, and, therefore, the fact that the college or the Managing Committee was not a statutory body was no hindrance to the High Court issuing the writ prayed for by the appellant has no merit as this Court expressly stated in the judgment that no such contention was raised in the High Court and so it cannot be allowed to be raised in this Court."*

52. In the case on hand, the facts are similar. Rule 26(1) of the Affiliation Bye-laws, framed by CBSE, provides that each school affiliated with the Board shall frame Service Rules. Sub-rule (2) of it provides that a service contract will be entered with each employee as per the provision in the Education Act of the State/ Union Territory, or as given in Appendix III, if not obligatory as per the State Education Act. These rules also provide procedures for appointments, probation, confirmation, recruitment, attendance representations, grant of leave, code of conduct, disciplinary procedure, penalties, etc. The model form of contract of service, to be executed by an employee, given in Appendix III, lays down that the service, under this agreement, will be liable to disciplinary action in accordance with the Rules and Regulations framed by the school from time to time. Only in case where the post is abolished or an employee intends to resign, Rule 31 of the Affiliation Bye-laws of the Board will apply. It may be noted that the above Bye-laws do not provide for any particular procedure for dismissal or removal of a teacher for being incorporated in the contract. Nor does the model form of contract given in Appendix III lay down any particular procedure for that purpose. On the contrary, the disciplinary action is to be taken in accordance with the Rules and Regulations framed by the school from time to time.

53. On a plain reading of these provisions, it becomes clear that the terms and conditions mentioned in the Affiliation Bye-laws may be incorporated in the contract to be entered into between the school and the employee concerned. It does not say that the terms and conditions have any legal force, until and unless they are embodied in an agreement. To put it in other words, the terms and conditions of service mentioned in Chapter VII of the Affiliation Bye-laws have no force of law. They become terms and conditions of

service only by virtue of their being incorporated in the contract. Without the contract they have no vitality and can confer no legal rights. The terms and conditions mentioned in the Affiliation Bye-laws have no efficacy, unless they are incorporated in a contract. In the absence of any statutory provisions governing the services of the employees of the school, the service of Respondent 1 was purely contractual. A contract of personal service cannot be enforced specifically. Therefore, Respondent 1 cannot find a cause of action on any breach of the law, but only on the breach of the contract. That being so, the appellant's remedy lies elsewhere and in no case the writ is maintainable.

54. Thus, the aforesaid order passed by this Court makes it very clear that in a case of retirement and in case of termination, no public law element is involved. This Court has held that a writ under Article 226 of the Constitution against a private educational institution shall be maintainable only if a public law element is involved and if there is no public law element is involved, no writ lies.

55. In ***T.M.A. Pai Foundation v. State of Karnataka****, (2002) 8 SCC 481, an eleven-Judge Bench of this Court formulated certain points in fact to reconsider its earlier decision in* ***Ahmedabad St. Xavier's College Society v. State of Gujarat****, (1974) 1 SCC 717, and also* ***Unni Krishnan, J.P. v. State of A.P.****, (1993) 4 SCC 111, regarding the "right of the minority institution including administration of the student and imparting education vis-à-vis the right of administration of the non-minority student".*

56. In the said case, very important points arose as follows:- (T.M.A. Pai Foundation case, SCC pp. 709-10, para 450)

"450. … 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 in 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.

Regulations can be framed governing service conditions for teaching and other staff for whom aid is provided by the State without interfering with overall administrative control of management over the staff, government/university representative can be associated with the Selection Committee and the guidelines for selection can be laid down. In regard to unaided minority educational institutions such regulations, which will ensure a check over unfair practices and general welfare of teachers could be framed."

57. We now proceed to look into the two decisions of this Court in ***Ramesh Ahluwalia*** *(supra) and* ***Marwari Balika Vidyalaya*** *(supra) respectively.*

58. In ***Ramesh Ahluwalia*** *(supra), the appellant therein was working as an administrative officer in a privately run educational institution and by way of disciplinary proceedings, was removed from service by the Managing Committee of the said educational institution. A writ petition was filed before the learned Single Judge of the High Court challenging the order of the disciplinary authority wherein he was removed from service. The writ petition was ordered to be dismissed in limine holding that the said educational institution being an unaided and a private school managed by the society cannot be said to be an instrument of the State. The appeal before the Division Bench also came to be dismissed. The matter travelled to this Court.*

59. The principal argument before this Court was in regard to the maintainability of the writ petition against a private educational institution. It was argued on the behalf of the appellant therein that although a private educational institution may not fall within the definition of "State" or "other authorities/instrumentalities" of the State under Article 12 of the Constitution, yet a writ petition would be maintainable as the said educational institution could be said to be discharging public functions by imparting education. However, the learned counsel for the educational institution therein took a plea before this Court that while considering whether a body falling within the definition of "State", it is necessary to consider whether such body is financially, functionally and administratively dominated by or under the control of the Government. It was further argued that if the control is merely regulatory either under a statute or otherwise, it would not ipso facto make the body "State" within Article 12 of the Constitution. On the conspectus of the peculiar facts of the case and the submissions advanced, this Court held that a writ petition would be maintainable if a private educational institution discharges public functions, more particularly imparting education. Even by holding so, this Court declined to extend any benefits to the teacher as the case involved disputed questions of fact.

60. We take notice of the fact that in ***Ramesh Ahluwalia*** *(supra) the attention of the Hon'ble Judges was not drawn to the earlier decisions of this Court in* ***K. Krishnamacharyulu*** *(supra),* ***Federal Bank*** *(supra),* ***Sushmita Basu v. Ballygunge Siksha Samity****, (2006) 7 SCC 680, and* ***Delhi Public School v. M.K. Gandhi*** *(supra).*

61. In ***Marwari Balika Vidyalaya*** *(supra), this Court followed* ***Ramesh Ahluwalia*** *(supra) referred to above.*

62. We may say without any hesitation that respondent 1 herein cannot press into service the dictum as laid down by this Court in ***Marwari Balika Vidyalaya*** *(supra) as the said case is distinguishable. The most important distinguishing feature of* ***Marwari Balika Vidyalaya*** *(supra) is that in the said case the removal of the teacher from service was subject to the approval of the State Government. The State Government took a specific stance before this Court that its approval was required both for the appointment as well as removal of the teacher. In the case on hand, indisputably the Government or any other agency of the Government has no role to play in the termination of Respondent 1 herein.*

63. In context with ***Marwari Balika Vidyalaya*** *(supra), we remind ourselves of Bye-law 49(2) which provides that no order with regard to the imposition of major penalty shall be made by the disciplinary authority except after the receipt of the approval of the Disciplinary Committee. Thus unlike* ***Marwari Balika Vidyalaya*** *(supra) where approval was required of the State Government, in the case on hand the approval is to be obtained from the Disciplinary Committee of the institution. This distinguishing feature seems to have been overlooked by the High Court while passing the impugned order.*

64. In ***Marwari Balika Vidyalaya*** *(supra), the school was receiving grant-in-aid to the extent of dearness allowance. The appointment and the removal, as noted above, is required to be approved by the District Inspector of School (Primary Education) and, if any action is taken dehors such mandatory*

provisions, the same would not come within the realm of private element.

65. In ***Trigun Chand Thakur*** *(supra)s, the appellant therein was appointed as a Sanskrit teacher and a show-cause notice was issued upon him on the ground that he was absent on the eve of Independence day and Teachers Day which resulted into a dismissal order passed by the Managing Committee of the private school. The challenge was made by filing a writ petition before the High Court which was dismissed on the ground that the writ petition is not maintainable against an order terminating the service by the Managing Committee of the private school. This Court held that even if the private school was receiving a financial aid from the Government, it does not make the said Managing Committee of the school a "State" within the meaning of Article 12 of the Constitution of India.*

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****, (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, 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.

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.*

x x x x

25. A similar view was taken in ***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****, (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.' "

69. The aforesaid decision of this Court in ***Ramakrishna Mission*** *(supra) came to be considered exhaustively by a Full Bench of the High Court of* ***Allahabad in Uttam Chand Rawat v. State of U.P.*** *reported in (2021) 6 ALL LJ 393 (FB), wherein the Full Bench was called upon to answer the following question:- (Uttam Chand Rawat case, 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, 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 (supra) 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.

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)

71. We owe a duty to consider one relevant aspect of the matter. Although this aspect which we want to take notice of has not been highlighted by Respondent 1, yet we must look into the same. We have referred to the CBSE Affiliation Bye-laws in the earlier part of our judgment. Appendix IV of the Affiliation Bye-laws is with respect to the minority institutions. Clause 6 of Appendix IV is with respect to the disciplinary control over the staff in a minority educational institution. We take notice of the fact that in Clause 6, the State has the regulatory power to safeguard the interests of their employees and their service conditions including the procedure for punishment to be imposed.

72. For the sake of convenience and at the cost of repetition, we quote Clause 6 once again as under:

> *"**6. Disciplinary control over staff in Minority EducationalInstitutions**.—While the managements should exercise the disciplinary control over staff, it must be ensured that they hold an inquiry and follow a fair procedure before punishment is given. With a view to preventing the possible misuse of power by the management of the Minority Educational Institutions, the State has the regulatory power to safeguard the interests of their employees and their service conditions including procedure for punishment to be imposed." (Emphasis supplied)*

73. It could be argued that as the State has regulatory power to safeguard the interests of the employees serving with the minority institutions, any action or decision taken by such institution is amenable to writ jurisdiction under Article 226 of the Constitution.

*74. In the aforesaid context, we may only say that merely because the State Government has the regulatory power, the same, by itself, would not confer any such status upon the institution (school) nor put any such obligations upon it which may be enforced through issue of a writ under Article 226 of the Constitution. In this regard, we may refer to and rely upon the decision of this Court **in Federal Bank** (supra). While deciding whether a private bank that is regulated by the Banking Regulation Act, 1949 discharges any public function, this Court held thus:- (Ramakrishna Mission case, SCC pp. 315-16, paras 33-35)*

> *"33. … '33… 'in our view, a private company carrying on banking business as a scheduled bank, cannot be termed as an*

institution or a company carrying on any statutory or public duty. A private body or a person may be amenable to writ jurisdiction only where it may become necessary to compel such body or association to enforce any statutory obligations or such obligations of public nature casting positive obligation upon it. We do not find such conditions are fulfilled in respect of a private company carrying on a commercial activity of banking. Merely regulatory provisions to ensure such activity carried on by private bodies work within a discipline, do not confer any such status upon the company nor put any such obligation upon it which may be enforced through issue of a writ under Article 226 of the Constitution. Present is a case of disciplinary action being taken against its employee by the appellant Bank. The respondent's service with the Bank stands terminated. The action of the Bank was challenged by the respondent by filing a writ petition under Article 226 of the Constitution of India. The respondent is not trying to enforce any statutory duty on the part of the Bank.' (Federal Bank case, SCC pp. 758-59, para 33)

34. Thus, contracts of a purely private nature would not be subject to writ jurisdiction merely by reason of the fact that they are structured by statutory provisions. The only exception to this principle arises in a situation where the contract of service is governed or regulated by a statutory provision. Hence, for instance, in K.K. Saksena [K.K. Saksena v. International Commission on Irrigation & Drainage, (2015) 4 SCC 670 : (2015) 2 SCC (Civ) 654 : (2015) 2 SCC (L&S) 119] this Court held that when

an employee is a workman governed by the Industrial Disputes Act, 1947, it constitutes an exception to the general principle that a contract of personal service is not capable of being specifically enforced or performed.

35. It is of relevance to note that the Act was enacted to provide for the regulation and registration of clinical establishments with a view to prescribe minimum standards of facilities and services. The Act, inter alia, stipulates conditions to be satisfied by clinical establishments for registration. However, the Act does not govern contracts of service entered into by the hospital with respect to its employees. These fall within the ambit of purely private contracts, against which writ jurisdiction cannot lie. The sanctity of this distinction must be preserved."

(Emphasis in original and supplied)

41. The final conclusion drawn in the said decision is reproduced herein:-

"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.

76. In view of the aforesaid discussion, we hold that the learned Single Judge of the High Court was justified in taking the view that the original writ application filed by Respondent 1 herein under Article 226 of the Constitution is not maintainable. The appeal court could be said to have committed an error in taking a contrary view."

42. In view of the aforesaid, nothing more is required to be discussed in the present appeals. We are of the view that the

High Court committed an egregious error in entertaining the writ petition filed by the respondents herein holding that the appellant society is a "State" within Article 12 of the Constitution. Undoubtedly, the school run by the Appellant Society imparts education. Imparting education involves public duty and therefore public law element could also be said to be involved. However, the relationship between the respondents herein and the appellant society is that of an employee and a private employer arising out of a private contract. If there is a breach of a covenant of a private contract, the same does not touch any public law element. The school cannot be said to be discharging any public duty in connection with the employment of the respondents.

ii. <u>Doctrine of Legitimate Expectation</u>

43. During the course of the arguments, a submission was canvassed that the respondents were under a legitimate expectation that their service conditions and salary would not be unilaterally altered by the appellant society to their disadvantage. Thus, as the respondents were neither consulted with nor taken in confidence by the appellant society before

effecting the changes in their service conditions, it amounted to a breach of their legitimate expectation, thereby making it a fit case for the exercise of writ jurisdiction by the High Court.

44. The doctrine of legitimate expectation was also referred to and relied upon by the single Judge of the High Court as one of the reasons to allow the writ petition filed by the respondents. The relevant observations made by the single Judge in the judgment and order dated 05.08.2014 are reproduced hereinbelow:-

> *"28. We also have to appreciate the "legitimate expectations" of the petitioners who expect equity, fairplay and justice, from a public authority which respondent nos. 2, 3 and 7 indeed are and, therefore, they must meet such standards as a public authority ought to 15 have. The new management of the School, including respondent no.2, 3 and 7 are hereby directed not to change or vary the conditions of the petitioners to their disadvantage."*

45. Before parting with the matter, we deem it necessary to answer the aforesaid submission of the respondents. This Court in ***Union of India v. Hindustan Development Corporation*** reported in (1993) 3 SCC 499 enunciated that the doctrine of legitimate expectation is a creature of public law aimed at

combating arbitrariness in executive action by public authorities. It held thus:-

> *"Time is a three-fold present: the present as we experience it, the past as a present memory and future as a present expectation. For legal purposes, the expectation cannot be the same as anticipation. It is different from a wish, a desire or a hope nor can it amount to a claim or demand on the ground of a right. However earnest and sincere a wish, a desire or a hope may be and however confidently one may look to them to be fulfilled, they by themselves cannot amount to an assertable expectation and a mere disappointment does not attract legal consequences. A pious hope even leading to a moral obligation cannot amount to a legitimate expectation. The legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure followed in regular and natural sequence. Again, it is distinguishable from a genuine expectation. Such expectation should be justifiably legitimate and protectable. Every such legitimate expectation does not by itself fructify into a right and therefore it does not amount to a right in the conventional sense."*

46. In ***Ram Pravesh Singh v. State of Bihar*** reported in (2006) 8 SCC 381, this Court explained the doctrine of legitimate expectation in details as follows:-

> *"What is legitimate expectation? Obviously, it is not a legal right. It is an expectation of a benefit, relief or remedy, that may ordinarily flow from a promise or established practice. The term "established practice" refers to a regular, consistent, predictable and certain*

conduct, process or activity of the decision-making authority. The expectation should be legitimate, that is, reasonable, logical and valid. Any expectation which is based on sporadic or casual or random acts, or which is unreasonable, illogical or invalid cannot be a legitimate expectation. Not being a right, it is not enforceable as such. It is a concept fashioned by the courts, for judicial review of administrative action. It is procedural in character based on the requirement of a higher degree of fairness in administrative action, as a consequence of the promise made, or practice established. In short, a person can be said to have a "legitimate expectation" of a particular treatment, if any representation or promise is made by an authority, either expressly or impliedly, or if the regular and consistent past practice of the authority gives room for such expectation in the normal course. As a ground for relief, the efficacy of the doctrine is rather weak as its slot is just above "fairness in action" but far below "promissory estoppel". It may only entitle an expectant : (a) to an opportunity to show cause before the expectation is dashed; or (b) to an explanation as to the cause for denial. In appropriate cases, the courts may grant a direction requiring the authority to follow the promised procedure or established practice. A legitimate expectation, even when made out, does not always entitle the expectant to a relief. Public interest, change in policy, conduct of the expectant or any other valid or bona fide reason given by the decision-maker, may be sufficient to negative the "legitimate expectation". The doctrine of legitimate expectation based on established practice (as contrasted from legitimate expectation based on a promise), can be invoked only by someone who has dealings or transactions or negotiations with an authority, on which such established practice has a bearing, or by someone who has a recognised legal relationship with the authority. A total stranger unconnected with the authority or a person who had no previous dealings

with the authority and who has not entered into any transaction or negotiations with the authority, cannot invoke the doctrine of legitimate expectation, merely on the ground that the authority has a general obligation to act fairly."

47. In ***Jitender Kumar v. State of Haryana*** reported in (2008) 2 SCC 161, this Court, while differentiating between legitimate expectation on the one hand and anticipation, wishes and desire on the other, observed thus:-

"A legitimate expectation is not the same thing as an anticipation. It is distinct and different from a desire and hope. It is based on a right. [See Chanchal Goyal (Dr.) v. State of Rajasthan [(2003) 3 SCC 485 : 2003 SCC (L&S) 322] and Union of India v. Hindustan Development Corpn. [(1993) 3 SCC 499] It is grounded in the rule of law as requiring regularity, predictability and certainty in the Government's dealings with the public. We have no doubt that the doctrine of legitimate expectation operates both in procedural and substantive matters."

48. A reading of the aforesaid decisions brings forth the following features regarding the doctrine of legitimate expectation:

a. *First*, legitimate expectation must be based on a right as opposed to a mere hope, wish or anticipation;

b. *Secondly*, legitimate expectation must arise either from an express or implied promise; or a consistent past practice or custom followed by an authority in its dealings;

c. *Thirdly*, expectation which is based on sporadic or casual or random acts, or which is unreasonable, illogical or invalid cannot be treated as a legitimate expectation;

d. *Fourthly*, legitimate expectation operates in relation to both substantive and procedural matters;

e. *Fifthly*, legitimate expectation operates in the realm of public law, that is, a plea of legitimate action can be taken only when a public authority breaches a promise or deviates from a consistent past practice, without any reasonable basis.

f. *Sixthly*, a plea of legitimate expectation based on past practice can only be taken by someone who has dealings, or negotiations with a public authority. It cannot be invoked by a total stranger to the authority

merely on the ground that the authority has a duty to act fairly generally.

49. The aforesaid features, although not exhaustive in nature, are sufficient to help us in deciding the applicability of the doctrine of legitimate expectation to the facts of the case at hand. It is clear that legitimate expectation, jurisprudentially, was a device created in order to maintain a check on arbitrariness in state action. It does not extend to and cannot govern the operation of contracts between private parties, wherein the doctrine of promissory estoppel holds the field.

50. We have discussed in detail in preceding paragraphs that even if the function being performed by a private educational institution in imparting education may be considered as a public function, the relationship between the administration of such an institution and its employees remains a contractual one, falling within the ambit of private law.

51. Nothing has been placed on record by the respondents to show that any express or implied promise was made by the appellant regarding keeping their salary and service conditions intact. There have been no past negotiations or dealings between

the respondents and the appellant society as the dispute arose as soon as the appellant took over the administration of the school. Moreover, there is no statutory obligation on the appellant society which requires that the salaries and allowances of the respondents are to be kept at par with what is payable to teachers of Government institutions. Lastly, the appellant society, for the purposes of its relationship with its employees, cannot be regarded as a public or Government authority.

52. We are of the view that for all the aforesaid reasons, the doctrine of legitimate expectation will have no applicability to the facts of the present case. The submission of the respondents in that regard is thus answered accordingly.

H. CONCLUSION

53. In the result, the appeals succeed and are hereby allowed. The impugned judgment and order passed by the High Court is hereby set aside.

54. Although we have set aside the impugned judgment and order passed by the High Court, yet having regard to the

submissions made on behalf of the appellants as recorded in paragraph 6 of the order dated 15.02.2021 (extracted in paragraph 4 herein above) as also the fact that all the respondents as on date are serving with the appellant society, they shall continue to serve on the terms and conditions as stipulated by the appellant society. The appellant society shall not discharge the respondents from service.

55. There shall be no order as to costs.

.....J.
(J.B. PARDIWALA)

.....J.
(MANOJ MISRA)

NEW DELHI;

JULY 9, 2024