

**IN THE HIGH COURT AT CALCUTTA
(CONSTITUTIONAL WRIT JURISDICTION)**

APPELLATE SIDE

Present:

The Hon'ble Justice Partha Sarathi Chatterjee

WPA 24895 of 2023

Soma Bhaduri

-Vs.-

The State of West Bengal & Ors.

For the Petitioner : Mr. Sukanta Chakraborty,
Mr. Roumyadip Saha.

For the State : Mr. Supriyo Chattopadhyay, Ld. AGP,
Mr. Suman Dey.

For the Respondent School Authority : Dr. Chapales Bandhopadhyay,
Ms. Anandamayee Dutta,
Mir Anuruzzaman.

Heard on : 10.04.2025

Judgment on : 01.05.2025

ParthaSarathiChatterjee, J.:-

1. The conundrum posited in this writ petition is whether disciplinary action taken by the Managing Committee of an unaided private educational institution against its teaching staff is amenable to writ jurisdiction, on the ground that the staff has no alternative remedy, since the West Bengal

Administrative (Adjudication of School Disputes) Commission is yet to commence its operations.

2. For the resolution of the conundrum, the key facts that require to be adumbrated are as follows:

- a) The petitioner was appointed as an Assistant Teacher in Music on a permanent basis at Bidya Bharati Girls' High School (hereinafter referred to as "the school"), an unaided private educational institution, pursuant to a letter of appointment dated 1st July, 2016, issued by the Secretary of the school.
- b) On 21st February 2023, while on her way to school, the petitioner met with an accident when her saree became entangled while alighting from a bus, resulting in injuries that rendered her unable to wear a saree comfortably. Consequently, the petitioner submitted a representation before the Managing Committee, seeking permission to wear an alternative attire, such as a salwar kameez or similar.
- c) Despite receiving the petitioner's representation, the Managing Committee did not take any decision on the matter. Under the impression that her request had been accepted, the petitioner began wearing a salwar kameez in the school from 4th March 2023. However, on 7th March 2023, she discovered that the Managing Committee had engaged another teacher in her place.
- d) The petitioner thereafter expressed her grievance regarding the actions of the Managing Committee to various authorities, including the jurisdictional police, the President of the West Bengal Board of

Secondary Education (W.B.B.S.E.), the District Inspectors of Schools, Kolkata, the Chairperson of the West Bengal Commission for Women, both *via e-mails* and by submitting written representations.

- e) Ultimately, the Managing Committee terminated her service following its decision taken on 16th May 2023 w.e.f. 31.05.2023, citing its decision to discontinue Music as a subject in the junior middle section, based on the claim that Music was not a compulsory subject under the curriculum prescribed by the West Bengal Board of Secondary Education.
- f) These incidents generated considerable public uproar and attracted attention from print, electronic, and social media. Nevertheless, the Managing Committee adhered to its decision, which compelled the petitioner to approach this Court by filing the present writ petition.

3. At the very outset, the school authorities and the State jointly raised the issue of maintainability of the writ petition and contended that it is liable to be dismissed *in limine*.

4. Dr. Bandyopadhyay, the learned advocate representing the school authorities, vigorously argued that the jurisdiction under Article 226 of the Constitution can only be exercised if an element of public law is involved. He further contended that while an unaided private school may discharge a public function by imparting education, this alone cannot serve as the basis for maintaining the writ petition, particularly when the contract between the teaching and non-teaching staff and the school's managing committee is a

purely private contract. According to him, since the petitioner's rights arise from a private contract, she cannot seek redress for her grievances in the writ jurisdiction of this Court. To support his submission, he cited two unreported decisions of this Court: one by a Hon'ble Division Benches in MAT 1278 of 2021 (*Narayan School, Barasat & Anr. vs. Anisur Rahaman & Ors.*) and the other by a Coordinate Bench in WPA 19024 of 2014 (*Rita Ghoshdastidar vs. St. Joseph & Mary's School & Ors.*). He also relied on a decision, reported in 2024 SCC OnLine Cal 2923 (*Pinaki Dhar vs. State of West Bengal & Ors.*) and 2025 SCC OnLine SC 177 (*S. Shobha vs. Muthoot Finance Ltd.*).

5. Mr. Dey, the learned advocate for the State, concurred with the submissions made by Dr. Bandyopadhyay. He further argued that a writ court cannot issue a mandamus to an unaided private school regarding matters related to the service conditions of its staff. According to him, a private right arising from a contract cannot be enforced through the issuance of a writ. In support of his contention, he referred to the decisions reported in (2011) 13 SCC 760 (*Satimbla Sharma & Ors. vs. St. Paul's Senior Secondary School & Ors.*) and 2019 (1) CHN (Cal) 521 (*Sonia Maheswari vs. State of West Bengal & Ors.*).
6. Per contra, Mr. Chakraborty, the learned advocate representing the petitioner, while narrating the facts that led to the filing of this writ petition, argued that in light of Article 21A of the Constitution of India, the right to education has been recognized as a fundamental right. To give effect to this fundamental right, the legislature enacted the Right of Children to Free and Compulsory Education Act, 2009 (in short, RTE Act), and the State of West Bengal also framed the West Bengal Right of Children to Free and Compulsory

Education Rules, 2012 (in short, 2012 Rules). Therefore, according to him, an unaided private school, while imparting education to children in the State, discharges statutory duties. He asserted that a private body discharging public functions would inevitably be amenable to writ jurisdiction.

7. He submitted that an unaided private school would fall within the definition of a "school" under Section 2(n) of the RTE Act, and as such, the duties performed by such a school are statutory duties. Consequently, an unaided private school would qualify as an "authority" within the meaning of Article 226 of the Constitution of India. Referring to the provisions of Section 24(2) of the RTE Act, which stipulates that any teacher who defaults in the performance of their duties shall be liable to disciplinary action under the applicable service rules, he argued that disciplinary action taken by an unaided private school, being a matter of the statutory obligations of the school, would be amenable to writ jurisdiction.

8. Mr. Chakraborty drew my attention to Rule 17 of the 2012 Rules, which provides that any grievance of a teacher in any school shall be addressed by the Managing Committee. If the Managing Committee fails to address the grievance or if the teacher is dissatisfied with the decision of the Managing Committee, an appeal may be made to the West Bengal Administrative (Adjudication of School Disputes) Commission. He argued that, since this Commission has yet to commence its operations, the petitioner currently has no efficacious alternative remedy. Therefore, he contended that, in the present case, the disciplinary action taken by the Managing Committee of the school would be subject to the writ jurisdiction of this Court.

9. To bolster his submissions, he cited the decisions, reported in (2023) 4 SCC 498 (*St. Mary's Education Society & Anr. vs. Rejendra Prasad Bhargava & Ors.*), (2023) 4 SCC 539 (*S.K. Varshney vs. Principal, Our Lady of Fatima Higher Secondary School & Ors.*), (2019) 16 SCC 303 (*Ramkrishna Mission & Anr. vs. Kago Kunya & Ors.*), 2017 SCC OnLine Cal 362 (*Jayanti Mandal vs. State of West Bengal & Ors.*) and three unreported decisions, one by a Coordinate Bench of High Court of Delhi in *W.P. (C) 15997/2024 (Jayati Mozumder vs. Managing Committee Sri Sathya Sai Vidya Vihar & Anr.)*, two by two different Coordinate Benches of this Court in *WPA 25382 of 2017 (Madhurima Das vs. The State of West Bengal & Ors.)* & *WPA 5544 of 2021 (Bineeta Patnaik Padhi vs. Union of India & Ors.)*.
10. Undeniably, a writ of mandamus or the remedy under Article 226 of the Constitution of India is pre-eminently a public law remedy. A writ is typically issued to compel the statutory/public authority to discharge their duties, and to act within their bounds. However, the scope of mandamus is determined not by the identity of the authority against whom it is sought, but by the nature of the duty to be enforced. Accordingly, a writ may also be issued against a private body that discharges public functions or is under a positive obligation of a public nature. Furthermore, it may be directed against any person or body obligated under a statute to perform a public or statutory function, compelling them to fulfil such duties.
11. In *Binny Ltd. v. V. Sadasivan*, reported in (2005) 6 SCC 657 [referred to in the judgment of *Ramkrishna Mission (supra)*], the Supreme Court observed that it is often difficult to draw a definitive line between public and private functions when such functions are discharged by a purely private authority.

The Court clarified that a body may be considered as performing a “public function” when it seeks to achieve some collective benefit for the public, or for a section of the public, and is accepted by that public or section thereof as having the authority to do so. Such bodies are deemed to exercise public functions when they intervene in or contribute to social or economic activities in the public interest.

12. Therefore, an unaided private educational institution, in the course of imparting education to its students, undoubtedly performs public functions. However, this does not imply that every dispute involving such an institution, or every act or omission on its part, is necessarily amenable to writ jurisdiction. The act complained of must have a direct nexus with the discharge of public duty. The maintainability of a writ petition largely depends on the nature of the dispute and the corresponding right sought to be enforced by an individual against the institution. Where the right in question arises purely from a private law obligation such as a contractual or personal dispute, it cannot ordinarily be enforced through the exercise of writ jurisdiction under Article 226 of the Constitution. [See, the decision of *St. Mary Education Society & Anr. (surpa)*].

13. In the decision of *S. Shobha (supra)*, it was emphasized that public bodies are also entitled to a private sphere of activity. A private body discharging certain public functions may simultaneously perform private functions. In this context, when a private educational institution engages staff, such engagement is fundamentally rooted in a private contract. The relationship between the institution’s managing committee and its employees

is, therefore, governed by the terms and conditions of the contract mutually agreed upon by the parties.

14. In the present case as well, although the school is engaged in discharging public functions by imparting education to its student in accordance with the curriculum prescribed by the West Bengal Board of Secondary Education, and is subject to certain statutory obligations under the West Bengal Secondary Education Act, the Right of Children to Free and Compulsory Education Act (RTE Act), and the Rules framed thereunder, the act of appointing staff remains fundamentally a matter of private contract. It would not be appropriate to conclude that merely because the institution complies with certain statutory obligations under the 2012 Rules, all its actions thereby become subject to writ jurisdiction. For instance, a private nursing home is similarly required to adhere to statutory duties under the Clinical Establishments (Registration and Regulation) Act and related regulations. However, compliance with such obligations does not by itself transform the nursing home into a public authority or body amenable to writ jurisdiction under Article 226 of the Constitution.

15. The terms and conditions governing the petitioner's engagement and service are rooted entirely in a private contract and are not governed by any statutory provision. As such, in the absence of any statutory backing or "statutory flavour" to the contract, the petitioner's claim is not enforceable through the writ jurisdiction of the Court under Article 226 of the Constitution.

16. In a series of decisions, including *St. Mary's Education Society & Anr.*, *Satimbla Sharma & Ors.*, and *S.K. Varshney*, the Hon'ble Supreme Court, as well as in a long line of judgments such as *Pinaki Dhar*, *Narayan School*,

Barasat & Anr., and others, different Hon'ble Division Benches of this Court have consistently reiterated this view

17. As noted earlier, Mr. Chakraborty, referring to the provisions of Rule 17 of the 2012 Rules sought to argue that as the West Bengal Administrative (Adjudication of School Disputes) Commission has yet to commence its operation, the petitioner has no efficacious alternative remedy and therefore, according to him, for this reason only, this writ petition would be maintainable. In the decisions of *Narayan School*, *Barasat & Anr.* (*supra*) and *Sonia Maheswari* (*supra*), it was observed that in similar circumstances, the aggrieved party would have an appropriate remedy before the civil forum as such, reliance of Mr. Chakraborty on the decision of Bineeta Patnaik Padhi (*supra*) is misplaced. Therefore, the petitioner is at liberty to institute a civil suit to seek the relief claimed. Thus, it cannot be held that the petitioner has no remedy.
18. Therefore, based on the propositions laid down in the aforementioned decisions and the discussions in the preceding paragraphs, the only conclusion that can be drawn is that the present writ petition, which essentially seeks to enforce rights arising from a purely private contract, is not maintainable. Accordingly, the objection raised by the respondents regarding the maintainability of this writ petition is sustained.
19. The writ petition, consequently, is dismissed. There shall be, however, no order as the costs.

20. It is necessary to clarify that nothing in this judgment and/or order shall preclude the petitioner from seeking appropriate relief before the competent forum in accordance with law.

(Partha Sarathi Chatterjee, J.)