

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

WP(C) No. 533/2024
CM Nos. 1713/2024, 2471/2024 & 1256/2024

Reserved On: 24.09.2024

Pronounced On: 22.10.2024

1. Shivali Sharma, Aged 31 years ...Petitioner(s)
W/o Vijay Kumar
R/o Near Head Post Office behind Bal
Bharti of Vidya Mandi School, Udhampur
2. Mrs. Meena Kumari, Aged 31 years
W/o Arjun Singh
R/o Chack rakhwala, Udhampur;
3. Mrs. Ambica Sharma, Aged 31 years
D/o Parshotam Kumar
R/o Omara morh Near Santoshi Mata
Mandir, Udhampur;
4. Miss Vishaka Aged 33 years
D/o Tilak Raj Thapa,
R/o Indra Nagar, Udhampur.

Through: Mr. Ajaz Chowdhary, Advocate.

Versus

1. Army Public School through its President
(AWES) Chief of Army Staff, Room No. B-
30, ADG Strat Comm South Block,
Integrated Headquarter of Ministry of
Defence (Army), New Delhi-110011.
2. Army Public School through its Managing
Director (AWES) Building No. 202,
Shankar Vihar Delhi Cantonment, New
Delhi-110011.
3. Army Public School, Udhampur Through its
Patron, GOC-in-C Headquarter Northern
Command C/o 56 APO, Udhampur

4. Army Public School, through its Chairman (SMAC) Brigadier (SAMT) CDR. TA GP. HQ., Northern Command 71 Sub Area, C/o 56 APO.

5. Army Public School, Udhampur through its Principal P.O PTA, T Morh, Udhampur-182104.

...Respondent(s)

Through: Mr. Vishal Sharma, DSGI for R-1, 3 and 4.
Mr. Vikas Sharma, Advocate for R- 2 and 5.

CORAM:

HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE.

JUDGMENT

1. In the instant petition filed under Article 226 of the Constitution of India, the petitioners have sought the following reliefs:-

"CERTIORARI

- (i) *Seeking quashment of Article 132(B) and 132(C) of red book which is illegal, arbitrary and against the mandate of constitution of India as well as the same is violative of the principal of nature, justice and being arbitrary powers, which hits the fundamental rights of an individual.*
- (ii) *Quashment of termination order dated 16.02.2024 issued by the respondent No.5 being violative of principle natural justice as well as issued by incompetent officer and without jurisdiction.*

MANDAMUS:-

- (i) *Commanding and directing the respondents to allow the petitioner*

Nos. 1 to 4 to continue work on the posts held by them in Army Public School, Udhampur, i.e., TGT-(Social Science), TGT (Science), PGT (Mathematics), respectively.

- (ii) Commanding and directing the respondents to release the salary of the petitioners alongwith all the consequence benefits as applicable to the petitioners from time to time.*
- (iii) Any other relief which the Hon'ble Court may deem fit and proper in the circumstances of the case may also be granted in favour of the petitioners."*

FACTUAL MATRIX OF THE CASE

Before advancing on this topic, it is appropriate to provide a quick summary of the facts, concisely outlined as follows:

2. Petitioners No. 1 and 2 were appointed as TGT (Regular) in Social Science, petitioner No. 3 as TGT in English, and petitioner No. 4 as PGT in Mathematics at Army Public School, Udhampur, following the Advertisement Notice dated 16.03.2022. After completing the written test and interview, the selection list was published on 31.03.2022, listing petitioner No. 1 at Serial No. 8 for TGT (Social Science), petitioner No. 2 at Serial No. 9 for TGT (Social Science), petitioner No. 3 at Serial No. 3 for TGT (English), and petitioner No. 4 at Serial No. 1 for PGT (Mathematics) at Army Public School, Udhampur.

3. The petition asserts that respondent No. 4, as the Chairman of Army Public School, Udhampur, issued appointment orders dated

05.05.2022 for petitioners Nos. 1, 2, and 4, and an order dated 24.03.2022 for petitioner No. 3, in his capacity as the appointing authority.

4. Furthermore, since the petitioners were appointed on a regular basis, their services are subject to the statutes governing Central Government employees, and they were provided with the pay scale and dearness allowance applicable to such employees. Consequently, the service regulations applicable to Central Government personnel are pertinent to the petitioners as well, rendering the contested orders invalid and necessitating their annulment. The petitioners assert that they were not selected on a contractual or necessity basis; therefore, the regulations cited against them do not apply to their services.

SUBMISSIONS ON BEHALF OF THE PETITIONERS:

5. The petitioners counsel has attempted to establish a distinction based on the judgment delivered by the Hon'ble Apex Court in "*Army Welfare Education Society Vs. Sunil Kumar Sharma and others.*" It has been submitted that in the aforementioned judgment, the petitioners sought the enforcement of a private contract; however, the present case is distinguishable, as the petitioners are employees of the Army Public School. According to the Learned Counsel, these employees (petitioners) are performing a public duty of teaching and executing a public function, which falls within the

purview of Article 12 of the Constitution of India, thereby rendering the petition maintainable.

6. The learnt counsel for the petitioners asserts that the petitioners should not be dismissed from their positions at the arbitrary discretion of the respondents, and that any service conditions that contradict universally accepted rules cannot be applied to the petitioners, as they violate the principle of natural justice. Therefore, the contested orders must be annulled. He asserts that the issue concerning the maintainability of the writ petition against Army Public School was resolved by both the Division Bench of the Madras High Court and the Division Bench of the Delhi High Court, as well as the Hon'ble Supreme Court in 2016, in SLP No. 3609/16, which ruled on 12.02.2016 that the writ petition is maintainable, given that the Army Public School is established under the Act and falls within the scope of the State as defined by Article 12 of the Constitution of India. The Hon'ble Supreme Court, in the case "*Urmila Chouhan Vs. Chairman Army Public School*," annulled a judgment rendered by the Division Bench of the High Court of Himachal Pradesh and directed the respondents to reassess the petitioner's appointment as a regular Teacher. Therefore, the issue of maintainability is no longer a matter of reconsideration.

7. The petitioners learnt counsel has ardently contended that both the contested provision and the impugned orders are flawed and necessitate annulment. Furthermore, directives should be issued to the

respondents to allow the petitioners to continue their service at Army Public School Udhampur and to grant all associated benefits, as the termination of the petitioners, executed without reasoned and articulate orders, infringes upon the fundamental rights enshrined in the Constitution of India.

8. Learnt counsel for the petitioners asserts that candidates in comparable circumstances, selected under the same Advertisement Notice at Army Public School Dhar Road, Udhampur, were permitted to continue without receiving termination notices. The written test was conducted at a national level, rendering the treatment of the petitioners arbitrary. Furthermore, the impugned orders were issued by respondent No. 4, who lacks the requisite authority.

9. To support his arguments, the learnt counsel for the petitioners referenced paragraph 42 of the aforementioned judgment (*Army Welfare Education Society judgment*), which states that the High Court made a significant error in entertaining the writ petition filed by the respondents, determining that the appellant society qualifies as a "State" under Article 12 of the Constitution of India. Learnt counsel for the petitioners asserts that, in this context, the aforementioned judgment was issued by the Hon'ble Apex Court, however, in the present case, he contends that the petitioners were properly appointed by the respondents after successfully completing the written examination and competing in accordance with the advertisement notice. Therefore, the respondents had a legal

obligation to regularize the petitioners in line with similarly situated employees.

10. The learnt counsel for the petitioners asserts that the respondents did not provide a show cause notice prior to the issuance of the impugned order, nor did they provide any rationale within the order that would justify the non-confirmation of the petitioners as regular teachers. In the lack of any compelling reasons, the impugned order cannot withstand legal scrutiny and is subject to annulment.

11. The petitioners learnt counsel has directed the Court's attention to the pertinent rules governing the service conditions of teachers. According to Rule 132, specifically Sub-rule (b), all regular employees shall be placed on probation from the date of their initial appointment. In exceptional and justifiable circumstances, the probation period may be extended at the discretion of the Board of Administration, as outlined in Rule 24 of the Army Welfare Education Society Rules. The petitioners learnt counsel has also referenced Sub-Clause (c) of the aforementioned provisions, pertaining to the Confirmation Clause.

12. The petitioners counsel contended vigorously that the aforementioned rules were not adhered to by the respondents in both letter and spirit. Consequently, the impugned order cannot withstand legal scrutiny, as the respondents failed to demonstrate satisfaction regarding the petitioners work and conduct prior to issuing the order.

Furthermore, if the respondents had already resolved not to extend the probationary period, it was incumbent upon them to communicate this decision of non-confirmation to the petitioners at least one month prior to the conclusion of the probationary term, serving as a formal notice for termination of services. The petitioners learnt counsel contends that, while the respondents have conferred the best teachers award upon one petitioner, they have failed to extend the probation period and have issued the impugned decision instead of regularizing the petitioners. The learnt counsel for the petitioners has vigorously contended that all petitioners had a legitimate expectation of timely confirmation, analogous to that of similarly situated teachers who have served in the same school for over 10 to 15 years. Conversely, the respondents, rather than confirming the petitioners, have issued the impugned orders, treating them with inequity. Consequently, the petitioners have faced unjust discrimination, which fails to withstand legal scrutiny and is subject to annulment. The petitioners learnt counsel asserts that, due to the passage of time, the petitioners have aged and are therefore unable to pursue work opportunities abroad.

13. Finally, the learnt counsel for the petitioners asserts that a similarly situated candidate has submitted a writ petition to this Court, which has been registered as WP(C) 402/2024. This Court issued an order on 28.02.2024, which restrained the respondents from enforcing the impugned order dated 16.02.2024, pending the Court's

consideration of the matter. The petitioners, being similarly situated candidates, have requested analogous reliefs.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS:

14. Mr. Vishal Sharma, Learnt DSGI, contends that the present petition is not maintainable and that the legal principles established by the Hon'ble Apex Court in the case of *Army Welfare Education Society, supra* are entirely relevant to the current matter. He has directed the Court's attention to paragraphs 6, 11, and 12 of the aforementioned judgment, which pertain to the facts of the current case, which is analogous to the prior case. Consequently, he asserts that the legal principles established by the Hon'ble Supreme Court are pertinent to the present matter as well. To substantiate his assertion, Mr. Vishal, DSGI, has drawn this Court's attention to the operative segment of the aforementioned judgment, specifically paragraph 42, in which the Hon'ble Apex Court determined that the relationship between the respondent and the appellant society in that case constituted that of an employee and a private employer, stemming from a private contract. Furthermore, it was established that a breach of a covenant within a private contract does not implicate any public law element; consequently, the School cannot be deemed to be fulfilling any public duty regarding the employment of the respondents.

15. Learnt counsel for the respondents asserts that the legal principles established by the Hon'ble Apex Court in the

aforementioned case are entirely pertinent to the current matter; consequently, the writ petition is deemed non-maintainable, as the relationship between the administration of the Army Welfare Education Society and its employees is contractual, thus situated within the realm of private law. Mr. Vishal Sharma, esteemed DSGI, asserts that given the enquiries stated by the Apex Court, which have been addressed in this matter, the petitioners argument that the facts are distinct is irrelevant to the legal principles established by the Apex Court.

16. He further asserts that although the role of a private educational institution in providing education may be deemed public, the relationship between the institution's administration and its employees is fundamentally contractual, governed by private law. Similarly, the Hon'ble Apex Court has rendered a determination in the aforementioned case, and the legal principles established therein are pertinent to the present matter; hence, the writ petition is not maintainable and should be dismissed at the outset.

REBUTTAL ARGUMENTS/SUBMISSIONS ON BEHALF OF PETITIONERS:

17. Mr. Ajaz Chowdhary, esteemed counsel for the petitioners, asserts that the judgment rendered by the Hon'ble Apex Court referenced above, upon which the respondents counsel relies, is inapplicable to the petitioners case due to distinguishable facts in the present matter. The petitioners in the aforementioned case filed a writ

petition concerning the enforcement of a private contract between the employees and Gabriel Society, which ultimately reached the Hon'ble Apex Court. In this context, the judgment rendered is, according to the petitioners counsel, inapplicable to the current case. In this instance, the petitioners are not seeking enforcement of the private contract; instead, they assert that they were engaged through a legitimate selection process initiated by the respondents via an advertisement. The petitioners participated in this process and, having successfully completed it, were appointed. The learnt counsel for the petitioners contends that the appointing authority is respondent No. 4, and respondent No. 5 lacks the authority to issue the contested orders. At most, respondent No. 5 should only recommend whether the petitioners services should not be extended beyond the probationary period. It is respondent No. 3, the actual appointing authority, who must decide if the petitioners are undesirable, based on reasons documented by the disciplinary committee, and this decision must follow the issuance of a show cause notice for serious misconduct. In the current situation, there is no active inquiry against the petitioners, nor have any adverse remarks been documented in their yearly performance reports.

18. In rebuttal, learnt counsel has highlighted that the orders for the petitioners appointment were issued by the Brigadier, and the termination should also have been issued by the same competent authority. However, in this instance, the order was issued by an

inferior officer, namely respondent No. 5, rendering the impugned order legally unsustainable. The learnt counsel for the petitioners asserts that upon their appointment, the petitioners acquired a right that cannot be revoked without adhering to due process of law. Furthermore, no justification has been provided for the non-extension of their probationary period, resulting in termination of services at this late stage when they have reached an advanced age.

SURREBUTTAL ARGUMENTS/SUBMISSIONS ON BEHALF OF THE RESPONDENTS

19. Mr. Vishal Sharma, learnt DSGI, asserts that the impugned orders were issued by a competent authority and subsequently approved by the Chairman. The respondent No. 5, Principal Army Public School, Udhampur, merely communicated these orders, which does not imply that they were not issued by a competent authority. He has also depended on the admission made by the petitioners, who have recognized their awareness of the Army Welfare Education Society Regulations and the terms and conditions of their engagement. Therefore, the petitioners cannot now claim ignorance of the terms and conditions of their employment. Mr. Sharma, esteemed DSGI, has directed this Court's attention to the Classification, Recruitment, Qualifications, and Terms & Conditions of Service, specifically regarding Regulation 132, which pertains to the Service Conditions of Regular Teaching, Non-teaching, Academic, and Administrative Staff. An examination of this

regulation indicates that all regular employees shall, upon initial employment, undergo a probationary period not exceeding two years from the date of their commencement of duties. Under extraordinary and valid circumstances, the extension period may be further prolonged at the discretion of the Board of Appointments, as the employment of an individual during the extended probationary period may be terminated by the appointing authority without justification, provided that one month's written notice or one month's salary in lieu of notice, inclusive of all allowances, is given.

20. He has also directed the Court's attention to Clause (c) of Regulation 132, which pertains to Confirmation and is applicable solely in the event that the work and conduct of a regular employee during the probationary or extended probationary period are deemed satisfactory. In such cases, management may confirm the employee's services via written communication, a decision that must be made at least one month prior to the conclusion of the probation period and communicated to the probationer as a notice of termination of service.

21. Mr. Sharma, asserts that Rule 138(b) grants the respondents an unrestricted authority to neither prolong the probationary period, nor to terminate the probationer's services at any point.

22. He additionally asserts that the Hon'ble Apex Court has addressed the two questions by determining that, even if the activities

conducted by a private educational institution in delivering education are deemed a public function, the relationship between the institution's administration and its employees remains contractual and falls within the scope of private law. The relationship between the respondents and the Army Welfare Society was that of an employee and a private employer, stemming from a private contract. Consequently, the alleged breach of this contract does not involve any public law aspect, as a school cannot be considered to be fulfilling any public duty in relation to the respondents' employment. In this context, the aforementioned judgment has been issued by the Hon'ble Apex Court, which is entirely relevant to the petitioners case.

LEGAL ANALYSIS:

23. Heard the learnt counsel for both parties. The instant petition is being considered for final disposal with the agreement of all sides.

24. Prior to addressing the merits of the case, it is appropriate to first delineate the concerns that necessitate the court's consideration in the present petition. The following are identified:

- A. Does the Army Welfare Education Society qualify as a "State" as defined in Article 12, thereby allowing for a writ to be filed under Article 226 of the Constitution of India?*
- B. Can the private contract between AWES and the Teachers be enforced by writ jurisdiction?*
- C. Were the respondents justified in terminating the petitioners services given the unique facts and circumstances of the case, particularly in light of*

the absence of any adverse findings against the petitioners, who had successfully completed their probation period in accordance with the AWES Rules.

25. Initially, it is crucial to ascertain the maintainability of the current petition. To address this issue, this Court finds it appropriate to refer the recent judgment delivered by the Hon'ble Supreme Court in "**Army Welfare Education Society New Delhi Vs Sunil Kumar Sharma**," reported in 2024 SCC OnLine SC 1683, which determined that AWES does not constitute a "**State**" under Article 12 of the Constitution. The Hon'ble Apex Court opined that while a private educational institution's role in delivering education may be perceived as a public function, the relationship between the institution's administration and its employees is contractual, governed by private law, and therefore not subject to writ jurisdiction.

26. It is essential for this court that the schools deliver education, so ensuring the presence of a public component. The "public element" denotes the facet of an institution's operation that caters to the interests of the community or society as a whole. In the realm of education, it acknowledges that schools bear the obligation to deliver educational services that serve the public good. Nonetheless, in the context of employment disputes or internal affairs, the public dimension may be irrelevant, as these issues are confined to private contractual relationships rather than public responsibilities.

27. Any educational institution indeed fulfils a public obligation, hence incorporating a public aspect. Nevertheless, the court must acknowledge that the conflict between the school and the teachers concerns their job circumstances, which falls under the category of "private contract," rendering the public element inapplicable in this context.

28. The roles of an educational institution impact various facets of public life, and if these roles are considered public obligations/duties, they may be contested under Article 226 of the Constitution of India. Nonetheless, actions or decisions executed under a standard employment contract that lack statutory support cannot be contested under Article 226. In the absence of service requirements dictated by statutory provisions, these matters fall within the domain of standard employment contracts.

29. Moreover, a contract can only constitute a legal breach if it is governed by statutory provisions and a violation of those provisions is demonstrated, as statutory law typically delineates specific requirements that must be complied with, and noncompliance can establish grounds for legal recourse. In such instances, the aggrieved party may pursue remedies via the relevant legal forum, which may encompass damages, specific performance, or other equitable remedies, contingent upon the nature of the breach and applicable law, rather than as a basis for this Court's interference by

invoking writ jurisdiction under Article 226 of the Indian Constitution under the pretext of executing a public duty.

30. Concerning the Army Welfare Education Society (AWES), it is essential to refer the relevant chapters of the AWES Rules and Regulations for Army Public Schools, often known as the Red Book. The following text originates from Chapter 1:

CHAPTER-1 BRIEF HISTORY, AIMS AND OBJECTIVES OF ARMY WELFARE EDUCATION SOCIETY (AWES)

Brief History

- 1. Formation of Army Welfare Education Organisation (AWEEO) on 15 January 1980 under the Adjutant General's Branch marked the beginning of the present-day contour of the organisation. AWEEO was raised with a theme to fulfill the educational needs of the wards of the Army personnel. 28 Regimental Schools and Four High Schools managed by the Army were taken into the folds of AWEEO.**
- 2. AWEEO was registered under the Societies Registration Act XXI of 1860 as Army Welfare Education Society (AWES) on 29 April 1983 as a statutory pre-requisite to run educational institutions. There are 137 Army Public Schools (APS) and 12 Army Professional Colleges spread all over India for providing education to wards of Army Personnel.**
- 3. AWES entered the field of professional education in 1994 when the then Chief of Army Staff decided to establish Army Institute of Technology at Pune. As of**

now twelve professional colleges have been established.

4. *AWES is not a Public Body and it has duty towards its members only. It is neither a statutory body nor are its relations governed by a statute. The contract of service between AWES/AWES run Educational Institutions and their employees does not come under the domain of public law. AWES and its educational institutions are not State within the meaning of Article 12 of the Constitution of India.*

Aims and Objectives

5. *AWES is committed to following aims and objectives:*
- a) *To create or augment Educational and Technical/Professional/Vocational training facilities to meet the needs of children of Army personnel including widows and ex-servicemen (Army).*
 - b) *To promote/impart higher education including technical and professional education to the wards of Army personnel including widows and ex-servicemen (Army). Professional education will include disciplines of Engineering, Medicine, Hospitality, Law, Education, Management, Fashion and Design and any other discipline considered relevant from time to time.*
 - c) *To develop co-educational Army Public Schools for imparting quality education at affordable cost to the children of Army personnel including Ex-Army personnel.*

- d) *To issue guidelines, co-ordinate curriculum and empower teachers with respect to Army Pre-Primary Schools (APPS) to facilitate smooth transition of students to Primary and High Schools.*
- e) *To prepare the students for All India Secondary School and All India Senior School Certificate (10+2 stage) examinations of the Central Board of Secondary Education with a common syllabi, thus enabling the children of Army personnel who are transferred to be admitted in mid-session.*
- f) *To promote development of academic excellence, discipline, personal character, high sense of values and national integration among the children of Army personnel.*
- g) *To promote sports and co-curricular activities.*
- h) *To gradually create adequate hostel facilities in selected Institutions/Stations, on as required basis.*
- i) *To encourage all educational institutions established by the Society to attain financial self-sufficiency within a reasonable period so that welfare funds allotted for educational facilities can be utilised for other educational projects.*
- j) *Undertaking fund raising activities for augmenting the resources made available from welfare funds.*
- k) *To upgrade the skills of teachers and staff consistent with the latest developments in the fields of science & technology and education including curriculum and methods*

of teaching through workshops, seminars, symposiums, refresher courses and other such events.

1) To undertake do such other things which are incidental to the promotion of the aforementioned aims and objectives.

31. A cursory examination of Chapter 1, Rule 4 of the AWES Rules & Regulations explicitly indicates that AWES is not classified as a public entity and has responsibilities exclusively to its members. It is neither a statutory entity nor its relationships are governed by any statute. The employment contracts between AWES, its educational institutions, and their employees are not governed by public law. Consequently, AWES and its educational institutions do not meet the criteria of "State" as defined in Article 12 of the Constitution of India.

32. The Hon'ble Supreme Court, in a case titled "***Army Welfare Education Society New Delhi Vs Sunil Kumar Sharma***" (*supra*) has determined that the Army Welfare Education Society does not meet the criteria to be classified as a "State" under Article 12 of the Constitution of India. The pertinent paragraph of the aforementioned judgment is reproduced as follows:

"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.”

33. In the seminal decision of “*Pradeep Kumar Biswas vs. Indian Institute of Chemical Biology (2002) 5 SCC 111*”, the Supreme Court delineated criteria for determining when an entity can be classified as an instrumentality or agency of the Government. The Court delineated many essential criteria for this assessment:

Financial Assistance: The extent to which the government offers significant financial aid to the firm.

Governmental Control and Oversight: The extent to which the government exerts substantial influence over the corporation's management and policy.

Governmental Functions: The extent to which the corporation engages in activities traditionally associated with governmental entities.

Government Ownership: The extent to which the government possesses a majority of shares or exerts considerable influence over the corporation's decision-making processes.

Statutory Creation: The extent to which the corporation was established by legislation, indicating a heightened level of governmental oversight and accountability. These tests ascertain whether a corporation qualifies as an instrumentality or agency of the Government, thereby rendering it

amenable to writ jurisdiction under Article 226 of the Constitution.

34. The requirements established in *Ajay Hasia v. Khalid Mujib (1981) 1 SCC 722* are adaptable, requiring that the entity asserting to be a State be financially, administratively, and functionally dominated or controlled by the Government. The control must be shown as profound and extensive, rather than simply a regulatory measure by the Government. The implementation of only regulatory control would not qualify the entity as a State under Article 12. The Hon'ble Supreme Court, in the case of *Ajay Hasia v. Khalid Mujib*, has ruled as follows.

“9. The tests for determining as to when a corporation can be said to be an instrumentality or agency of government may now be culled out from the judgment in the International Airport Authority case®. These tests are not conclusive or clinching, but they are merely indicative indicia which have to be used with care and caution, because while stressing the necessity of a wide meaning to be placed on the expression "other authorities" , it must be realised that it should not be stretched so far as to bring in every autonomous body which has some nexus with the government within the sweep of the expression. A wide enlargement of the meaning must be tempered by a wise limitation. We may summarise the relevant tests gathered from the decision in the International Airport Authority case as follows:

(1) One thing is clear that if the entire share capital of the corporation is held by

Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of Government. (SCC p. 507, para 14)

(2) Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character. (SCC p. 508, para 15)

(3) It may also be a relevant factor... whether the corporation enjoys monopoly status which is State conferred or State protected. (SCC p. 508, para 15)

(4) Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality. (SCC p. 508, para 15)

(5) If the functions of the corporation are of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government. (SCC p. 509, para 16)

(6) "Specifically" if a department of Government is transferred to of the corporation, it would be a strong factor supportive of this inference" of the corporation being an instrumentality or agency of Government. (SCC p. 510, para 18)

If on a consideration of these relevant factors it is found that the corporation is an instrumentality or agency of government, it would, as pointed out in the International Airport Authority case, be an 'authority' and, therefore, 'State' within the meaning of the expression in Article 12.

10. We find that the same view has been taken by Chinnappa Reddy, J. in a subsequent decision of this Court in the U. P. Warehousing Corporation v. Vijay Narayan and the observations made by the learned Judge in that case strongly reinforced the view we are taking particularly in the matrix of our constitutional system.

35. The determination of whether a body falls within Article 12 was addressed by the Hon'ble Supreme Court in “*R.D. Shetty v. Airport Authority of India, (1979) 3 SCC 489*”, where Hon'ble Mr. Justice P.N. Bhagwati established a five-point test. This is an assessment to ascertain if an entity qualifies as an agency or instrumentality of the State, and the criteria for this assessment are as follows:

- a) **Financial resources of the State, wherein the State serves as the primary funding source, meaning the government possesses the entirety of the share capital.**
- b) **Extensive and profound control over the State.**
- c) **The functional nature is inherently Governmental, indicating that its**

functions of public significance or are of a Governmental nature.

d) A governmental department transferred to a company.

e) Possesses monopoly status that is bestowed or safeguarded by the state.

36. The Hon'ble Apex Court, in the case *Rajbir Surajbhan Singh vs The Chairman, Institute of Banking Personnel Selection, Mumbai 2019 (14) SCC 189*, determined that although an entity may be engaged in public duty and subject to writ jurisdiction, not all of its decisions are amenable to judicial review. Judicial review is permissible solely for decisions that possess a public component. The Court explained that while a writ may be issued against any private entity or individual, the ambit of Mandamus is confined to the execution of public duty. Conversely, even if an individual or authority is beyond the purview of Article 12 of the Constitution, if they are executing a public duty, a writ petition may be filed, and a writ of mandamus or other suitable writ can be granted. Nevertheless, a private entity should either operate primarily on government funding, fulfill a public duty or obligation, or be legally mandated to perform a function under any statute to be compelled to execute such a statutory duty.

37. This Court is fortified by the view taken by the Hon'ble Supreme Court in the case titled "*Kishor Madhukar Pinglikar versus Automotive Research Association of India, 2022 SCC Online SC 1799*", the relevant para whereof reads as under:

“6. It is to be observed that the determination of a body as a 'State' is not a rigid set of principles. What is to be seen is whether in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under the control of the Government, albeit if the control is mere regulatory, whether under statute or otherwise, it will not serve to make the body a State. Also, the presence of some element of public duty or function would not by itself suffice for bringing a body within the net of Article 12.”

38. The question of whether the Army Welfare Society is subject to writ jurisdiction has been definitively addressed by the Hon'ble Apex Court in the case of *Army Welfare Education Society New Delhi Vs Sunil Kumar Sharma (supra)*, and the present case is directly governed by the legal principles established in that case.

39. Consequently, based on the aforementioned legal statement, it may be conclusively determined that the Army Public Schools managed by the Army Welfare Education Society are not subject to State supervision, especially not to any substantial or extensive degree. Moreover, the Government does not offer financial support; rather, the institutions are financed through interest from corpus grants, tuition fees, additional fees, contributions, and diverse income streams. Consequently, these institutions are financially autonomous. Consequently, the Army Public Schools and the governing body do not meet the criteria to be classified as the "State" under Article 12 of the Constitution of India. The writ is not maintainable against the society. **Consequently, Issue No. 1 is resolved unfavorably for the petitioners.**

40. The second question requires determination by this Court is “**Whether the private contract between AWES and the Teachers can be enforced through writ jurisdiction.**”

41. The pertinent provisions of the Army Welfare Education Society Rules and Regulations 2019 concerning the service conditions of regular teaching, non-teaching, academic, and administrative staff must be scrutinized. The following are replicated below:

Section 132.Regular teaching, Non-teaching Academic and Administrative Staff.

- a) **Tenure.** *Staff employed under this category shall be on the rolls of the school till they attain the age of superannuation.*
- b) **Probation.** *All regular employees shall, on initial appointment, be on probation up to a maximum period of two years from the date of his/her joining the duties. In exceptional and justifiable circumstances, the period of probation may be further extended at the discretion of BoA. Services of employee during probation or extended period of probation may be terminated by the appointing authority without assigning any reason by giving one month notice in writing or one month salary in lieu of notice, including all allowances. In case, there is a need to terminate the services due to major act in discipline or breach of court of conduct, disciplinary action shall be initiated and only termination of sub shall not be resorted to. If an employee desires to be relieved during the period of probation, it*

would be necessary for him/her to give one month notice, in writing, or one month salary (Basic + DA) in lieu of the notice.

c) Confirmation. If the work and conduct of the regular employee during the period of probation or extended period of probation is found to be satisfactory, the management may confirm the services of the regular employee through a written confirmation. Decision to not give a confirmation should have to be taken at least one month before the period of probation and communicated to the probationer as a notice for termination of service. The absence of written communication, in time, on decision of non-confirmation and the probationers' continuation in holding the appointment beyond the date of completion of probation shall also be considered as confirmation.

42. An examination of clause (b) indicates that candidates are subject to a two-year probationary period at the time of their initial appointment, which may be extended under exceptional circumstances. The aforementioned rule additionally specifies that the respondents may terminate services with one month's notice without providing a cause, and in instances of indiscipline, termination may occur following appropriate disciplinary procedures. The respondents have emphasized Rule 132 (b) of the Army Welfare Education Society Rules and Regulations 2019, relying on it to assert their unrestricted power to terminate the petitioners services without cause.

43. That exercise of judicial review conferred by Article 226 of the Constitution of India empowers the High Court to intervene even in instances where the entity in question is not designated as the State, an authority, or an instrumentality of the State. However, it is imperative that the action under scrutiny possesses a public element for the court to exercise such jurisdiction.

44. This signifies that for a decision to be implemented, it must pertain to the execution of a public function. Although the respondent aims to deliver education, acknowledged as a public role, the current problem is to the termination of the Petitioner's services, which is essentially a contractual matter. A body is deemed to perform a public function when it seeks to serve the public or a particular subgroup and is recognized by that public or subgroup as possessing the capacity to act.

45. In a recent judgment by the Supreme Court in the **case *St. Mary's Education Society v. Rajendra Prasad Bhargava*, reported in (2023) 4 SCC 498**, the Court determined that while a private unaided minority institution may undertake activities that intersect with public functions by fulfilling a public duty, its employees lack the right to invoke the writ jurisdiction of the High Court under Article 226 of the Constitution concerning employment matters not governed by statutory provisions. The pertinent paragraphs are as follows:

“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.”

*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. Saxena 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 is 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.

46. The Hon’ble Supreme Court, in *“Trigun Chand Thakur v. State of Bihar, (2019) 7 SCC 513*, ruled that a teacher employed in a privately managed school, even if financially supported by the State Government or the Board, lacks the standing to file a writ petition

contesting a termination order issued by the Management. This opinion affirms that employment in privately managed institutions does not confer equivalent rights to contest management decisions under Article 226 of the Constitution, particularly when the entity does not qualify as the State or an instrumentality thereof. Thus, the authority of courts to engage in employment conflicts concerning privately operated educational institutions is significantly limited.

47. Moreover, during their appointment and throughout their probationary period, the petitioners did not contest the terms of their employment or the constitutional legitimacy of the AWES Rules and Regulations. This signifies that the petitioners were cognizant of all the stipulations and service conditions delineated in the Red Book and voluntarily acquiesced to them prior to their enrolment in the school, having also provided a corresponding undertaking.

48. Even if one posits that an educational institution fulfils a public obligation, the action in question must have a direct connection to the execution of that obligation. This action must pertain to public law, allowing the aggrieved party to apply exceptional writ authority under Article 226 for a prerogative writ. Grievances related to personal wrongs or violations of private contracts, without any public aspect, cannot be addressed through a writ petition under Article 226. Judicial intervention in these instances has occurred solely when the service conditions were regulated by statutory regulations, when the employer was classified as the "State" under the expansive

interpretation of Article 12, or when the activity in question demonstrated a public law element.

49. The instant case involves a private contract between the Army Welfare Education Society and the teachers, which cannot be enforced via a writ petition under any circumstances. Consequently, transactions that are exclusively private in nature are excluded from the purview of writ jurisdiction. **Thus, the second question is resolved unfavorably for the petitioners.**

50. The third issue for this Court's consideration is whether, given the specific facts and circumstances of the case, the respondents were justified in terminating the petitioners services, especially in light of the absence of any adverse findings against the petitioners and their successful completion of the probation period in accordance with the AWES Rules.

51. Once, this Court determines that the current writ petition is not maintainable for the reasons discussed in the preceding paragraphs, it cannot examine the merits of the matter. Nevertheless, this Court cannot disregard the fact that the petitioners, who are teachers, had an exemplary service record, and one of the petitioners received the best teacher award from the respondents. In the absence of any adverse report or pending disciplinary inquiry against the petitioners as per Rule 132 (C) of the Army Welfare Education Society Rules and Regulations, what justification did the respondent

authorities have for not extending the petitioners probation period or terminating their services without any substantial reasons?

52. The Army Welfare Education Society's rules and regulations explicitly state that the petitioners services may be confirmed upon successful completion of the probationary period, and in the absence of any adverse material, record, or reason against them, the respondents perhaps were not justified in terminating the petitioners services. This Court is not making any determination about the termination of the petitioners' services; the issue is left open to be addressed by the competent authorities if the petitioners pursue it before the relevant forum. This Court abstains from making any determination on the aforementioned matter due to the non-maintainability of the Writ petition for the reasons outlined above.

CONCLUSION:

53. Considering the aforementioned legal principles alongside the unique circumstances of the present case, this Court holds that the Army Welfare Educational Society does not qualify as a State, and its relationship with its teachers constitutes a private contract that cannot be enforced through writ jurisdiction under Article 226 of the Constitution of India.

54. The Court acknowledges and is also conscious of the fact that there were no detrimental factors against the petitioners-teachers that might justify their termination; therefore, the petitioners are

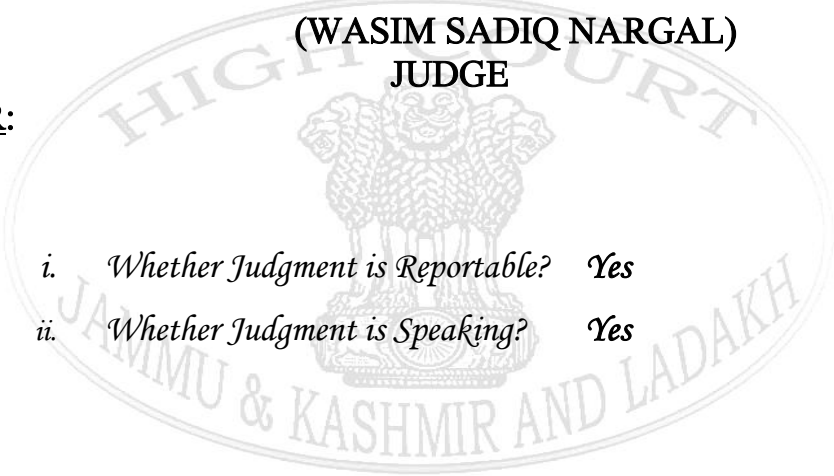
permitted to seek redressal of their grievances before appropriate forum.

55. This Court is not inclined to exercise its inherent jurisdiction under Article 226. The instant petition is **dismissed** as non-maintainable, along with all miscellaneous applications. Interim direction, if any, shall stand vacated.

56. The Registry is instructed to return the record submitted by Vishal Sharma, learnt DSGI, upon proper receipt.

(WASIM SADIQ NARGAL)
JUDGE

SRINAGAR:
22.10.2024
"HAMID"

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- i. *Whether Judgment is Reportable?* **Yes**
ii. *Whether Judgment is Speaking?* **Yes**