

2024 and Civil Misc. Review Application Defective No.117 of 2024 respectively.

26. As a sequel to the above, the present Special Appeal is **dismissed**.

27. There shall be no order as to the costs.

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**(2024) 10 ILRA 214**  
**APPELLATE JURISDICTION**  
**CIVIL SIDE**  
**DATED: LUCKNOW 21.10.2024**

**BEFORE**

**THE HON'BLE ATTAU RAHMAN MASOODI, J.**  
**THE HON'BLE SUBHASH VIDYARTHI, J.**

Special Appeal Defective No. 551 of 2024

**Surya Prakash Mishra**                      **...Appellant**  
**Versus**  
**State of U.P. & Ors.**                      **...Respondents**

**Counsel for the Appellant:**

Tanay Hazari, Alka Verma, Jhanak Bhawnani

**Counsel for the Respondents:**

C.S.C.

**Civil Law – Constitution of India, 1950 – Article 226 – UP Intermediate Education Act, 1921 – Section 16-G-(3)-** Special Appeal - against dismissal of Writ Petition – filed by the appellant, who is a Teacher in a private School, challenging the impugned order of termination of his services - learned Single Judge dismissed the writ petition on the ground of maintainability of writ petition in view of law laid down by Apex court in ***St. Mary's Education Society' case*** - while relying upon another judgment rendered by High Court of Madhya Pradesh at Indore in ***Vinita's case***, plea has been taken that, ***St. Mary's Education Society's*** case deals only with the non-teaching employees and the ratio laid down in that case would not apply to the appellant who was a teacher – court while relying upon the judgment

of Apex court in ***Army Welfare Education Society's*** case which dealt with both teachers and members of non-teaching staff, held that, writ petition filed for challenging the termination of service contract of a teacher working in a private institution will not be maintainable. (Para – 19, 20)

**Appeal Dismissed.** (E-11)

**List of Cases cited:**

1. St. Mary's Education Society Vs. Rajendra Prasad Bhargava & ors. (2023 4 SCC 498),
2. Vinita Vs U.O.I.(2022 SCC online MP 3745),
3. Devesh Verma Vs Christ Church College (2023 SCC online All 7),
4. Army Welfare Education Society, New Delhi Vs Sunil Kumar Sharma (2024 SCC online SC 1683).

(Delivered by Hon'ble Subhash Vidyarthi, J.)

**(Order on C.M. Application No. I.A. 1 of 2024)**

1. Heard Smt. Alka Verma, the learned counsel for the appellant and the learned Standing Counsel for the State.

2. This is an application for condonation of delay in filing the special appeal against the judgment and order dated 21.3.2024 passed by the Hon'ble Single Judge of this Court in Writ A No. 2377 of 2024.

3. In the affidavit filed in support of the application, it has been stated that the appellant is based at New Delhi and is suffering from chronic fever. It is also stated in the affidavit that after termination of his service, the appellant was facing financial crisis. The learned Standing

Counsel has not seriously opposed the application for condonation of delay.

4. The application for condonation of delay is allowed and the delay in filing the Special Appeal is condoned.

**(Order on Appeal)**

5. The instant appeal is directed against the judgment and order dated 21.03.2024 passed by the Hon'ble Single Judge in Writ A No. 2377 of 2024, which was filed challenging termination of the appellant's service on the post of Teacher in D.A.V. Public School, Ambedkar Nagar, Uttar Pradesh, which is a private school.

6. The Hon'ble Single Judge dismissed the Writ Petition as non-maintainable in view of the law laid down in the case of **St. Mary's Education Society versus Rajendra Prasad Bhargava and others:** (2023) 4 SCC 498. The learned counsel for the appellant ably attempted to distinguish the case on the ground that the judgment in the case of **St. Mary's Education Society** (Supra) pertains to non-teaching staff whereas the appellant was working on the post of the Teacher. However, the Hon'ble Single Judge held that in **St. Mary's Education Society** (Supra), the Supreme Court has clearly held that the employees of a private institution would not have the right to invoke the jurisdiction under Article 226 of the Constitution of India in respect of the matters relating to service contracts, where they are not governed or controlled by any statutory provisions and also that an educational institution may be performing myriad functions touching upon various facets of public duty but a contract of service being an offer and acceptance of terms between two private entities would

not fall within the realm of public functions regulated by public law.

7. Smt. Alka Verma, the learned counsel for the appellant has submitted that the judgment in **St. Mary's Education Society** (Supra) deals with the non-teaching employees and the ratio laid down in that case would not apply to the appellant who was a teacher. She has relied upon a decision rendered by a Single Judge Bench of the High Court of Madhya Pradesh at Indore in **Vinita v. Union of India, 2022 SCC OnLine MP 3745** wherein it has been held that the judgment of **St. Mary's Education Society** (Supra) would not apply to teachers of private institutions.

8. A perusal of the judgment in the case of **Vinita** (Supra) indicates that the Madhya Pradesh High Court has noted the preliminary objection that the writ petition was not maintainable in view of the judgment passed by the Apex court in the case of **St. Mary's Education Society** (Supra) and while dealing with this preliminary objection the Madhya Pradesh High Court has merely stated that the "applicability of this judgment has already been considered by Single Bench as well as by Division Bench, therefore, there is no need to reconsider the issue while deciding this petition finally".

9. The judgment in which the Single Judge and the Division Bench judgments referred to in Vinita Nair (supra), wherein the question of applicability of **St. Mary's Education Society** (supra) was considered, have not been placed before this Court.

10. **St. Mary's Education Society** runs a private unaided educational institution. Respondent 1 in the appeal -

Rajendra Prasad Bhargava, was serving as an office employee of the society. He had filed a Writ Petition challenging termination of his services. A Single Judge Bench of Madhya Pradesh High Court dismissed the Writ Petition as not maintainable but a Division Bench set aside the judgment and order and held that a writ petition filed by an employee of a private unaided minority educational institution seeking to challenge his termination from service is maintainable. The following two pivotal issues fell for consideration of the Hon'ble Supreme 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?*

11. The Hon'ble Supreme Court answered the aforesaid questions in the following words: -

*"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 recognized 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."*

(Emphasis added)

12. The learned Counsel for the appellant has emphasized that paragraph 75.4 of the judgment in *St. Mary's* case indicates that the Hon'ble Supreme Court has only held that a Writ Petition regarding service contract of a member of non-teaching staff of a private educational institution will not be maintainable whereas the teachers are engaged to impart education, which is a public duty performed by the school. Therefore, the service of the petitioner – teacher involved a public law element and consequently termination of services of a teacher of a private educational institution can be challenged by filing a writ petition.

13. The learned counsel for the appellant has further submitted that the school in question is recognized by the Board of Secondary Education and is governed by its rule and regulation. It is performing public duties and therefore the writ petition would be maintainable in respect of the service dispute between the appellant and the school in question.

14. Although para 75.4 of the judgment in **St. Mary's Education Society** (Supra) makes a mention of teachers, the principles of law mentioned in paras 75.1 to 75.3 relate to all employees of private educational institutions, without any distinction between teachers and members of non-teaching staff.

15. In **Devesh Verma v. Christ Church College**, 2023 SCC OnLine All 7, the appellant had filed a Writ Petition

challenging his removal from the post of Lecturer in Christ Church College, Lucknow, on the ground that the removal was done in violation of Section 16 G (3) of the U.P. Intermediate Education Act, 1921. The Writ Petition was dismissed by a Single Judge Bench as not maintainable. In appeal, a coordinate Bench of this Court considered numerous precedents on the issue and held that from a reading of the judgments, the law as summarized in *St. Mary's* (Supra) is that the employees of a private educational institution would not have the right to invoke the powers of the High Court conferred by Article 226 in respect of matters relating to service where they are not governed or controlled by the statutory provisions.

**16. In Army Welfare Education Society, New Delhi versus Sunil Kumar Sharma:** 2024 SCC OnLine SC 1683, a Single Judge of the High Court of Uttarakhand had allowed the writ petition by issuing a mandamus to the petitioners not to vary the service conditions of the teaching and non-teaching staff to their disadvantage. During pendency of the Intra Court Appeal, the Division Bench had passed an order was passed dated 06.01.2016, the relevant part whereof has been quoted in the judgment of the Hon'ble Supreme Court and which is being reproduced below: -

*“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."*

17. On behalf of the petitioners, it was submitted before the Hon'ble Supreme Court that the teaching and non-teaching 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. The following two questions of law fell for consideration of the Hon'ble Supreme Court: -

*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?*

18. The Hon'ble Supreme Court extensively quoted passages from the judgment in **St. Mary's Society** (Supra) and following the same, it was concluded that: -

*"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."*

19. The judgment in the case of **Army Welfare Education Society** (Supra) dealt with both teachers and members of non-teaching staff. Therefore, the submission of the learned Counsel for the appellant that the principles laid down in the case of **St. Mary's Education Society** would not apply to teachers, has no force. The service contract was also not shown to us protected under any statutory provision enabling us to extend the arm of remedy by virtue of Article 226 of the Constitution of India.

20. In view of the aforesaid discussions, we find ourselves in complete agreement with the view taken by the Hon'ble Single Judge in the order dated 21.03.2024 passed in Writ Petition 2377 of 2024, that a Writ Petition filed for challenging the termination of service

contract of a teacher working in private institution will not be maintainable.

(Delivered by Hon'ble Vikas Budhwar, J.)

21. The special appeal lack merit and the same is *dismissed*.

**(2024) 10 ILRA 220**  
**APPELLATE JURISDICTION**  
**CIVIL SIDE**  
**DATED: ALLAHABAD 15.10.2024**

## BEFORE

**THE HON'BLE MANOJ KUMAR GUPTA, J.**  
**THE HON'BLE VIKAS BUDHWAR, J.**

Special Appeal No. 937 of 2024

**Ajay Kumar Pandey** ...Appellant  
**Versus**  
**State of U.P. & Ors.** ...Respondents

**Counsel for the Appellant:**  
Km. Anjana, Sri Sarveshwari Prasad

**Counsel for the Respondents:**  
C.S.C, Sri Grijesh Tiwari, Sri Nitin Chandra Mishra.

**A. Education – Admission – LLB three year course – Eligibility –As per Brochure, a student in order to be eligible should possess the graduation degree relatable to the academic session 2016 or thereafter – However, the Law College took admission of 55 students, who did its graduation in the year 2008 – Admittedly no fraud was played by the students to take admission – Fault of the College found proved – Adequate compensation – Determination – Held, the Law College has acted not only in a careless and reckless manner but also exhibited a conduct other than bona fide just in order to enroll and admit students in order to charge fees playing with their future – Division Bench enhanced the monetary compensation from Rs. 30,000/- to Rs. 5,00,000/-. (Para 16 and 17)**

**Special Appeal disposed of. (E-1)**

1. This intra-court appeal is against the judgment and order of the learned Single Judge dated 28.08.2024 passed in Writ-C No. 33767 of 2022, whereby the writ petition preferred by the appellant-writ petitioner challenging the orders dated 01.11.2021 and 04.01.2021 of the Registrar, Deen Dalay Upadhyay Gorakhpur University, Gorakhpur, second respondent and Executive Examination Controller, Deen Dayal Upadhyay Gorakhpur University, Gorakhpur, third respondent was dismissed.

2. The case of the appellant before the writ court was that there happens to be an institution by the name of Prabha Devi Bhagwati Prasad Vidhi Mahavidhayalay, Anantpur, Harpur-Budhahat, Gorakhpur, fourth respondent (in short 'Law College') affiliated to Deen Dayal Upadhyay Gorakhpur University, Gorakhpur (in short 'University').

3. A notification came to be published by the University on 15.10.2019 for the grant of admission in LLB three years course for the academic session 2019-20. As per the notification, the last date for submission of the application form was 23.10.2019. According to the appellant-writ petitioner in order to secure admission, the relevant documents were to be submitted before the Law College and therefrom, the same were to be transmitted to the University. As per the appellant-writ petitioner the required documents was though submitted before the last date i.e. 23.10.2019 before the Law College but the same stood transmitted to the University on 10.06.2020. Thereafter, an online examination form came to be issued. The appellant writ petitioner was accorded