

(2020) 01 PAT CK 0061

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 12682 Of 2019

Anjana

APPELLANT

Vs

Flextronics Technologies India Private Ltd And Ors

RESPONDENT

Date of Decision : 22-01-2020

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2020) 01 PAT CK 0061

Hon'ble Judges : Ashutosh Kumar, J

Bench : Single Bench

Advocate : Kaushal Kishore Mishra

Final Decision : Dismissed

Judgement

1. Heard Mr. Kaushal Kishore Mishra, learned Advocate for the petitioner.

2. This petition has been preferred for quashing of the order dated 26th September, 2018 passed by respondent No. 3, who is an auditor of a private company, whereby the agreement with the petitioner has been terminated. On being questioned whether a private company which has terminated the agreement of the petitioner would be amenable to writ jurisdiction, the learned counsel for the petitioner has drawn the attention of this Court to a judgment of the Supreme Court in *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust & Ors. Vs. V.R. Rudani & Ors.*; (1989) 2 SCC 691, wherein it has positively been held in paragraphs 15 and 22 as follows:

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. 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 appellants-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. 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.

22. Here again we may point out that mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute. Commenting on the development of this law, Professor De Smith states : "To be enforceable by mandamus a public duty does not necessarily have to be one imposed by charter, common law, custom or even contract." We share this view. The judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into watertight compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available 'to reach injustice wherever it is found'. Technicalities should not come in the way of granting that relief under Article 226. We, therefore, reject the contention urged for the appellants on the maintainability of the writ petition.

3. It has categorically been stated that if the rights are purely of a private character, no mandamus can be issued. A writ of course can be issued if any private body is invested with a public duty or a duty under a statute, but not otherwise. This proposition of law is too well settled for this Court to make any discussion on the same.

4. Another decision which has been cited by the learned counsel for the petitioner is *M.P. Power Trading Co. Ltd. Vs. M/s. Lanco Amarkantak Power Pvt. Ltd. & Ors.*; AIR 2008 Madhya Pradesh 314. In paragraph 8 of the aforesaid judgment, the decision of the Supreme Court rendered in *Binny Ltd. & Anr. Vs. V. Sadasivan & Ors.*; (2005) 6 SCC 657 has been quoted which states that 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.

5. However, there must be the public law element in such action, which is, at times, difficult to distinguish.

6. By no stretch of imagination or logic can the functioning of a private limited company be considered to have been invested with a public duty.
7. The petitioner as a private contractor entered into contract with the respondent, which, after an audit of the performance, was terminated. Howsoever bad the order may be, it cannot be corrected by issuance of any writ. If the petitioner stands aggrieved by the order, he has other remedies under the civil law.
8. There is no merit in this petition and the same is therefore dismissed.