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**(2012) 12 MP CK 0013**  
**In the Madhya Pradesh High Court**  
**Case No : Writ Petition No. 5175 of 2011**

Girishchand Sharma

APPELLANT

Vs

Union of India and Others

RESPONDENT

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**Date of Decision :** 19-12-2012

**Acts Referred:**

Constitution of India, 1950 — Article 12

**Citation :** (2012) 12 MP CK 0013

**Hon'ble Judges :** Sujoy Paul, J

**Bench :** Single Bench

**Advocate :** N.K. Gupta, for the Petitioner in W.P. No. 5175/11, Mr. Pradeep K. Shrivastava, for the Petitioner in W.P. No. 5962/11 and Mr. Prashant Sharma, for the Petitioner in W.P. No. 8408/12, for the Appellant; Ankur Mody, Assistant Solicitor General for the Respondents-Union of India, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Hon. Shri Justice Sujoy Paul

1. These matters were heard on the question of maintainability. Accordingly, by this order the question of maintainability is dealt with. In W.P. No. 5175/2011, the petitioner has prayed for setting aside the order of Annexure P-1, P-7 and P-9 whereby his services were terminated.

2. In W.P. No. 5962/2011, the petitioner, a Trained Graduate Teacher (TGT) has challenged the order dated 15.7.2011 (Annexure P-1) whereby he was discharged from service.

3. In W.P. No. 8408/2012, the petitioner has challenged the order Annexure P-1, P-2 and P-3A whereby the petitioner is placed under suspension and a departmental enquiry is instituted against him.

4. The question of maintainability is raised by the other side on the ground that the BSF Senior Secondary School is not getting any regular grant-in-aid from the Government and no writ lies against unaided institution.

5. Shri Ankur Mody, learned counsel for the respondents, submits that besides the fact that the institution is unaided one the petitioners are claiming a relief which is personal in nature and, therefore, writ is not maintainable. He relied on various judgments passed by different Benches of this Court. By relying on W.P. No. 64/2011 (Narendra Kumar Jain Vs. Director General, BSF and others), he submits that it was already held that the writ against same institution is not maintainable. He relied on a Division Bench judgment passed in W.A. No. 391/2010 (Smt. Snehlata Tiwari Vs. Union of India and others) on the same subject.

6. Shri Prashant Sharma and Shri N.K. Gupta, learned counsel for the petitioners submit that it is factually incorrect that the institution is not getting grant-in-aid. They relied on various account sheets including Annexure P-10 in W.P. No. 8408/2012 and other documents filed along with the application for dismissing writ petition, i.e., I.A. No. 8773/2012. They relied documents filed along with this petition at page 18, Annexure R-2, Annexure R-4 and Annexure R-5. The learned counsel for the petitioners submit that the entries in these account sheets show that the respondents-institution has received grant. Apart from this, by referring to certain documents regarding deductions from the employees of the educational institution, it is stated that there is a compulsory deduction from the salary of employees in the head of respondent-educational institution which shows that the educational institution is in fact indirectly getting grant-in-aid from the employees of the BSF. It is further argued that the Senior Officers of BSF have a pervasive control over the affairs of the institution and, therefore, the institution is amenable to the writ jurisdiction of this Court.

7. Shri Ankur Mody, Asstt. Solicitor General for the respondents refuted the aforesaid statement.

8. I have heard the learned counsel for the parties and perused the record.

9. The respondents have categorically stated that they are not getting any grant-in-aid from the State or Central Government. The school in question is run by the society and officers of BSF are holding post in ex-officio capacity. This cannot be construed as pervasive control by the BSF or by the Government on the institution or on the Society.

10. The respondents in para 8 of the said application stated that certain amounts were received in the year 2003-2004 and in certain other financial years from the Ministry of Home Affairs as special welfare grant for welfare of Force Personnel in lieu of sale proceeds of Empty Fire Cartridges deposited into Government Treasury. It is stated that it is not a regular grant-in-aid. This amount was also utilized as a welfare measure for widow, wards etc.

11. In the opinion of this Court, various Benches of this Court have already opined that the respondents-institution is not amenable to the writ jurisdiction of this Court. This view is taken by the writ Court in Narendra Kumar Jain (supra) and by the Division Bench in Smt. Snehlata Tiwari (supra). I am bound by those

judgments. However, unless petitioners are in a position to provide clinching material to show that the respondents-institution are getting regular grant-in-aid, this Court cannot take a contrary view and it cannot be held that writ petition is maintainable against the respondents society/institute. It is profitable to refer to a larger bench decision of this Court rendered in W.A.No. 138/06 State of Madhya Pradesh and Others Vs. Chandra Shekhar Azad Shiksha Prasad Samiti, . In para 13 of the said judgment, this Court opined that the grant-in-aid should be understood in the context of a statutory provision. The grant-in-aid should be a continuous event. Merely because it was given for a particular year for a particular purpose and that event is over, it cannot be treated that the society is continued to be an aided society/school. Applying the said analogy, it is clear that the aid which has been granted was for a particular financial year against a particular head. The petitioners are unable to establish that there is continuous payment of grant-in-aid by the Government to the institute in question. In absence of establishing the same, there is no reason to deviate from the view which has been taken by this Court. Accordingly, I am unable to hold that the respondents-institution is an aided institution and writ petition is maintainable against it.

12. Although, Shri N.K. Gupta relied on judgment of Rajasthan High Court, but an in-depth reading of the said judgment shows that it is on different subject. The question of receiving grant-in-aid and tenability of writ petition for that reason was not the question before the Rajasthan High Court. He also relied on M.P. State Co-op. Dairy Fedn. Ltd. and Another Vs. Rajnesh Kumar Jamindar and Others, Pradeep Kumar Biswas and Others Vs. Indian Institute of Chemical Biology and Others, and M.P. State Co-operative Dairy Federation and Others Vs. Madan Lal Chourasia,

13. In the opinion of this Court, the legal preposition laid down in the said judgments are in fact the litmus test to determine whether a writ can be issued against the institution or whether a particular body can be treated as "State" within the meaning of Article 12 of the Constitution. On the basis of principles laid down in Pradeep Kumar Biswas (supra), said matters are decided. If these principles are applied, the petitioners are unable to show any deep and pervasive control of Government or BSF authorities on the respondents-institution. Merely because some officer is holding a post in the society in ex-officio capacity, it cannot be said that the BSF or Government has a deep and pervasive control over the affairs of the society. Grant-in-aid is not continuously given to the society or to the institution. Thus, the litmus test laid down in Pradeep Kumar Biswas (supra) and other cases is also not satisfied.

14. Apart from this, in Yashwant Singh Sikarwar Vs. Teresian Carmel Educational Society and others, it was held that in cases of relief which are personal in nature, no question of public law element is involved and, therefore, writ petition is not maintainable. In present cases also, the petitioners have prayed for relief which are personal in nature. A Division Bench of this Court in Sunil Kumar

Saxena Vs. Holy Cross Ashram Higher Secondary School and Others, took the same view after considering catena of judgments of this Court and the Supreme Court. It is opined that writ petition against unaided institution is not maintainable. No writ can be issued if no element of public law is involved in the matters. In a recent judgment reported in 2011 (4) M.P.L.J. 587 Virendra Singh Vs. Principal, Christ Church Boys Senior Secondary School, Jabalpur and another), the Principal Seat also took the view that writ against unaided minority institution is not maintainable. For the twin reasons stated above, the petitions cannot be entertained. It is made clear that this Court has not expressed any opinion on the merits of the case and it will be open for the petitioners to avail the remedy in accordance with law. Consequently, petitions are dismissed. No cost.