
(2004) 03 P&H CK 0153
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 5563 of 1996

Mrs. K. Naqvi

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 03-03-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Constitution of India, 1950 — Article 14, 16, 21(A), 226, 29(2)
Punjab Privately Managed Recongnised Schools Employees (Security of Service) Act, 1979 — Section 2
Punjab Privately Managed Recongnised Schools Employees (Security of Service) Rules, 1981 — Rule 7

Citation : (2004) 2 ILR (P&H) 11

Hon'ble Judges : Surya Kant, J

Bench : Single Bench

Advocate : Rajiv Atma Ram and Manish Jain, for the Appellant; K.K. Goel, A.A.G. for Respondent No. 1, B.M. Lal Advocate . for Respondent No. 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

Surya Kant, J.—In this writ petition under Article 226 of the Constitution of India, the Petitioner has sought a writ in the nature of certiorari for quashing the order dated March 25, 1996 (Annexure P-12) terminating her services. The Petitioner has also prayed to strike down Rule 7 of the "Rules and Regulations for Members of the Staff of the School" framed by the Management being ultra vires Articles 14 and 16 of the Constitution of India as also the public policy. The Petitioner has further sought a writ in the nature of mandamus commanding the Respondents to reinstate her into service with all consequential benefits.

The facts:

2. The Petitioner, on the strength of her excellent academic record, including a Postgraduate degree in the subject of English from Panjab University and B. Ed. from Annamalai University, joined as a Teacher in English on July, 25, 1980 in the

Yadvindra Pubic School, Sector 51, S.A.S. Nagar (Mohali) (hereinafter referred to as the Respondent-School). The Petitioner was confirmed on completion of probationary period of one year with effect from July, 25, 1990,--vide order dated July 21, 1991 (Annexure P-1) whereby she was also granted annual increment of Rs. 60 with effect from July 1, 1990; that work and conduct of the Petitioner always remained satisfactory and she was issued appreciation letters (Annexures P-3 and P-4) as well; and Petitioner had to undergo abdominal hysterectomy in the year 1994 due to which she remained on sanctioned leave from 16th February, 1994 to 31st May, 1994; the Petitioner rejoined on 28th May, 1994 and it was thereafter that,--vide letter dated July 27, 1994 (Annexure P-7) that her work was adversely commented upon; the Petitioner replied to the aforementioned letter; however,--vide communication dated July 27, 1994 (Annexure P-9) while informing the Petitioner that she had remained on leave for 129 days, she was also advised to keep in mind that if a teacher is away from the class for a long duration, the interest of the class suffers; the Petitioner was again admitted to the P.G.I. for further abdominal surgery due to which she again remained on leave for 27 days; the Management of the School, however, while sanctioning the aforementioned leave,--vide letter dated November 2, 1995 and after acknowledging the physical/medical problems of the Petitioner, also apprised her of the fact that her absence from the class was affecting the performance of the children and it had a dampening effect on their morale as well; the Petitioner was advised to take care of her health as also the requirements of the school; the Petitioner was also advised to use proper leave application form and to mention the dates for which leave was being applied for; the Management of the School was greatly upset with the Petitioner due to her taking leave repeatedly and the Principal of the School advised her to submit resignation so that the School could employ three fresh teachers on payment of the salary which was being paid to the Petitioner; the Petitioner refused to resign from service and anticipating termination thereof, she filed a civil suit on March 25, 1996 for permanent prohibitory injunction restraining the Defendants from terminating her services; and also for grant of mandatory injunction restraining the Defendants not to terminate her services without affording an opportunity of hearing; the Petitioner also moved an application under Order 39 Rules 1 and 2 of the Code of CPC for interim relief and upon issuance of notice in the said application, the Respondents put in appearance informing the Civil Court that services of the Petitioner had already been terminated; when the Petitioner went to the School on 16th April, 1996, the Vice-Principal gave her a letter of the same date alongwith photostat copy of order dated March 25, 1996 (Annexure P-12),--vide which her services had been terminated; the Petitioner; therefore, withdrew her suit with liberty to challenge the order of termination dated 25th March, 1996 as conveyed on April 2, 1996; hence, by way of the present petition. She has challenged her termination order on the ground that the order of termination of service is patently illegal as the Petitioner was a confirmed employee, yet her services were terminated by giving three months pay in lieu of notice period; no opportunity of hearing was granted to her; no charge-sheet

was issued nor was her explanation called for; her provident funds etc. were not released; that the impugned termination order has been passed in exercise of the powers under Rule 7 of the "Rules and Regulations for Members of the Staff of the School" framed by the Management, which is arbitrary and violative of Articles 14 and 16 of the Constitution of India and is reminiscent of Henry-VIII clause of hire and fire: that somewhat similar provisions of the similar statutes have already been struck down by the Courts in various judgments holding them to be arbitrary as also violative of Articles 14 and 16 of the Constitution of India. Thus, the impugned order of termination of services having been passed by invoking Rule. 7 referred to above, the impugned order and the Rule 7 both are liable to be struck down.

3. Written statement has been filed on behalf of the School and its management, namely, Respondent Nos. 2 and 3, inter alia, averring that the writ petition is not maintainable as no legal right of the Petitioner has been infringed; no writ petition lies against Respondent Nos. 2 and 3 as they are neither the State nor instrumentality of the State; the services of the Petitioner have been terminated as per the decision of the Board of Governors and in accordance with the terms and conditions of her employment; during her stay in the school, the Petitioner did not exhibit any diligence or inclination for work and in service tenure of 16 years and 8 months, she remained on leave for 15 months, in addition to normal school vacations; employment of the Petitioner is governed by the terms of contract, she being an employee of a private institution and her services could validly be terminated as per the terms of her appointment, that the School is owned and run by a Registered Society known as Yadvindra Public School Association, Patiala; the Society is neither State nor instrumentality of the State nor is it a statutory body; the Society has its own Memorandum of Association and Rules for internal management; the Society manages its affairs from its own funds and there is no financial aid from the State nor the State has any control over the management and policies of the Society; the judgments relied upon by the Petitioner are not applicable to the present case and as such the writ is not maintainable as the Respondents are private body; that at the time of joining the School, the Petitioner did not have a degree of B. Ed, or Masters and she was merely a Graduate with TTC; that initially the Petitioner was performing her duties satisfactorily but after about three years, she started neglecting her duties and was found quite remiss in their performance; the Petitioner had been obtaining leave excessively which caused adverse affect upon the interest of the students; that there was no ill-will against the Petitioner and she was never asked to resign by the Principal of the School; that the services of the Petitioner have been terminated as per terms of her appointment; that Rule 7 is neither arbitrary nor it violates Articles 14 or 16 of the Constitution of India; that even if the services of an employee of a private institution are wrongfully terminated, he is not entitled to seek reinstatement and the only remedy available to him is to seek damages for such wrongful dismissal; that the Petitioner while seeking appointment, accepted the terms and conditions thereof which also included the

stipulation regarding the applicability of Rules and Regulations framed from time to time.

4. A short reply has been filed by Shri Gian Singh, District Education Officer (S), Ropar on behalf of Respondent No. 1, inter alia, stating therein that Respondent No. 1 is not the appointing authority of the Petitioner and as such has no concern with the termination order passed against her; that the Government is not giving any aid to the School Committee and has no concern with the school activities; that the School is not even recognized by the Education Department and Respondent No. 1 has no concern with the school whatsoever as the school is directly affiliated to C.B.S.E.

5. I have heard Sarvshri Rajiv Atma Ram, learned Senior Counsel for the Petitioner, K.K. Goel, learned Additional Advocate General, Punjab for Respondent No. 1 and B.M. Lal, Learned Counsel for Respondents No. 2 and 3 besides carefully perusing the record.

6. It has been contended by Shri Rajiv Atma Ram, learned Senior Counsel for the Petitioner, that the Respondent-school imparts education to the public at large and thus performs "public duty" and that right to the school education having been recognised as one of the fundamental rights by the Apex Court, which now stands incorporated in Part-III, Article 21-A of our Constitution, the Respondent-school is not only performing the duties of the State, rather its activities are closely inter-twined with the duty of the State in discharging the constitutional obligation of providing education to the people. According to Shri Rajiv Atma Ram, the school being a vital instrument in the performance of public duty of providing education, it is amenable to the writ jurisdiction of this Court and the Petitioner or for that matter any other teacher of the school, who are the real tools to facilitate the performance of the aforementioned public duty by the School, are entitled for the same protection as is available to the government teachers in the matter of governance of their service conditions. Shri Rajiv Atma Ram, learned Senior Counsel further contended that the impugned termination order (Annexure P-12) has been passed on the basis of a presumed misconduct but neither any charge-sheet was issued nor any enquiry was held against the Petitioner; the impugned action is totally violative of the principles of natural justice and, therefore, the same is liable to be struck down and consequently the Petitioner is entitled to be reinstated into service.

7. On the other hand, Shri B.M. Lal, Learned Counsel representing Respondents No. 2 and 3 has contended that the Respondent-school is purely a private body as it does not receive any grant-in-aid from the State Government. The Respondents No. 2 and 3 are not the creation of any statute nor the management of the school is constituted, recognized or controlled by the provisions of a statute. In fact, the school itself has not been recognized by the Government of Punjab though it is affiliated with the Council for the Indian School Certificate Examinations, New Delhi. According to Shri Lal, the employment of the Petitioner in the school was purely a private contract entered

into between the Master and Servant and even if its breach is assumed to be wrongful, yet the Petitioner is not entitled to reinstatement as it may at the best, give cause of action to her to claim damages in appropriate proceedings. Shri Lal has further contended that even if the school is performing public duty of imparting education, the action in employing teachers or other employees or governing their service conditions does not constitute a part of the aforementioned public duty. He, therefore, contends that neither the writ petition is maintainable against Respondent Nos. 2 and 3 nor the Petitioner is entitled to reinstatement into service.

8. Shri K.K. Goel, learned Additional Advocate General, Punjab, representing Respondent No. 1 reiterated that the State Government does not give any grant-in-aid to the Respondent-school nor the same has even been recognised by the Education Department of the Government of Punjab and, therefore, the State has nothing to do with the private action of the Respondent-school in the matter of appointment and/or termination of its employees including the teachers.

9. Having heard the Learned Counsel for the parties, I am of the view that the core question which arises for consideration is as to whether the Yadvindra Public School or its Board of Governors are amenable to the writ jurisdiction of this Court or not ? If the aforementioned question is answered in the affirmative, then as to whether the Petitioner can seek a writ of certiorari for quashing the termination order dated 25th March, 1996 (Annexure P-12) and also command to the Respondents to reinstate her into service ?

10. In support of his contention that the writ petition is maintainable against the Respondent-school even if it is an unaided private school, Shri Rajiv Atma Ram, learned Senior Counsel for the Petitioner, has relied upon a Full Bench judgment of this Court in *Ravneet Kaur v. Christian Medical College, Ludhiana*, 1997 (3) R.S.J. 676., and the judgment of the Hon'ble Supreme Court in *K. Krishnamacharyulu and Others Vs. Sri Venkateswara Hindu College of Engineering and Another*, . He also placed reliance upon the judgment of the Hon'ble Supreme Court in *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, ., as also upon a few passages in *Unni Krishnan, J.P and Ors. v. State of Andhra Pradesh* and *Ors.* 1993 (2) R.S.J. 1.

11. In *Ravneet Kaur's* case (supra), a preliminary objection was raised by the Christian Medical College, Ludhiana regarding the maintainability of the writ petition which was essentially filed for seeking admission to the M.B.B.S course. The Full Bench, after taking notice of the fact that the Christian Medical College was duly recognised by the Medical Council of India and was affiliated to the Panjab University, referred to statutory provisions of the Indian Medical Council Act, 1956 and the Panjab University Act, 1947 and concluded as under:

15. A combined reading of the provisions of the Indian Medical Council Act, 1956, the Panjab University Act, 1947 and the Regulations/Rules framed there under

indicates a significant degree of control over the Institution by the Central Government, the Medical Council of India and the University. This control is virtually all pervasive. Every field of activity viz. the course of study, the recruitment of the staff, the facilities for providing education and training and even the conditions of service of the members of the staff are regulated.

17. The building and equipment are the body frame of the Institution. The affiliation to the University is the soul which gives it life. It gains recognition. It becomes entitled to train personnel who would be qualified to take care of the health of the community. The Institution becomes a partner with the State in performing a public duty. Should it still be treated as an isolated island which is immune from the intervention of the courts in spite of the wide language of Articles 226 of the Constitution ?

12. Their Lordships, on a consideration of the constitutional protection granted to the fundamental rights and remedies provided under Articles 32 and 226 of the Constitution of India for enforcement thereof against "any person or authority, including in appropriate cases, any government..." , further held as under:

21. The Constitution cannot be interpreted to mean that there are two sets of Rulers for the same game. It is only right that every Institution which is charged with a public duty follows the mandate of Article 14. It cannot act arbitrarily, treat equals unequally and make or follow Rules that are clearly violative of the prohibitions embodied in Part III of the Constitution. In fact, Article 29(2) contains a clear indication that even a private institution which is receiving aid, from the State cannot discriminate on grounds or religion, caste etc. Thus, there cannot be a dichotomy- a division of the institutions performing public duties into two strongly contrasted classes. The private institutions performing public duty supplement the State's effort. They are partners with the State. The private and Governmental institutions are the two sides of the same body. The right side cannot smile when the left side is pinched.

13. Repelling the argument that notwithstanding the wide language of Article 226 of the Constitution of India, a writ can be issued only against the State or other authorities as contemplated under Article 12 of the Constitution, the Full Bench concluded as under:

41. It is, thus, clear that the old and the conservative view regarding the maintainability of writs against the State or its instrumentalities is giving way to "a liberal meaning." The power under Article 226 is no longer confined to the issue of writs against statutory authorities and instrumentalities of the State. It covers "any other person or body performing public duty." Medical Colleges are supplementing the effort of the State. These cannot survive or subsist without recognition and/or affiliation. The bodies which grant recognition are required to ensure that the institution complies with Article 14 of the Constitution. These decisions represent a quantum jump- from "the tests" in *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, , to a liberal meaning to the term

"authority" in Article 226.

42. A private educational institution receiving aid from the State funds may not be a "State" as defined in Article 12. Yet, Article 29(2) confers a fundamental right on all citizens not to be discriminated against in the matter of admission to such an institution on grounds only of religion, caste, language or any of them. If a citizen is denied it be said that the aggrieved person cannot seek a writ for the enforcement of his rights either under Article 32 or 226 on the ground that it happens to be a private educational institution ? Certainly not.

14. In the concluding paragraph 59 of the judgment, the Full Bench held as under:

59. In view of the above, we hold that:

(i) ** ** *

(ii) ** ** *

(iii) The power under Article 226 of the Constitution is not confined to the enforcement of fundamental rights like the power under Article 32. Still further, the High Courts can issue writs, orders or directions even to any person or authority discharging a public duty for enforcement of the fundamental rights or for any other purpose.

(iv) The words "any person or authority" used in Article 226 do not mean only State as defined in Article 12 or statutory authorities. These cover any person or body performing a public duty.

(v) In view of the importance of "health" to the community, institutions providing medical education form a distinct class. These institutions perform a public duty and supplement the State's effort. By their affiliation to a University or any other statutory examining body, they become partners with the State. They are, thus, subject to the restrictions contained in Part III. They are bound to act in conformity with the provisions of the Indian Medical Council Act, 1956 and the Rules/Regulations framed by the appropriate University/body. Whenever they act unfairly, arbitrarily or violate them or prohibitions contained in Part III of the Constitution or the Rules and Regulations framed by the University etc., their actions can be corrected by issue of a writ of certiorari or any other appropriate writ, direction or order. Similarly, if it is found that an institution, has failed to carry out an obligation under the Constitution or the Rules/ Regulations framed by an appropriate body, it can be compelled to perform its duty by the issue of a writ of mandamus. This principle shall. however not be attracted in case of every private school or college,

(Emphasis applied).

15. In K. Krishnamaeharyulu's case (supra), the appellants were appointed on daily wages to the posts of Laboratory Assistants in the Respondent private college. Their claim for the grant of equal pay for equal work was rejected by the

High Court. Before the Hon''ble Supreme Court, it was admitted by the Respondent private college that there were executive instructions issued by the Government giving the Appellants the right to claim pay scales at par with the government employees. This was, however, also undisputed that there were no statutory Rules granting such a right nor the Institute at the relevant time was in receipt of any grant-in-aid from the State Government. Their Lordships, while considering the question as to whether writ petition under Article 226 of the Constitution could still be maintainable, held as under:

4. It is not in dispute that executive instructions issued by the Government have given the right to claim the pay scales so as to be on par with the Government employees. The question is when there is no statutory Rules issued in that behalf, and the Institution, at the relevant time, being not in receipt of any grant-in aid; whether the writ petition under Article 226 of the Constitution is not maintainable? In view of the long line of decisions of this Court holding that when there is an interest created by the Government in an Institution to impart education, which is a fundamental right of the citizens, the teachers who teach the education gets an element of public interest in the performance of their duties. As a consequence, the element of public interest requires to regulate the conditions of service of those employees on par with Government employees. In consequence, are they also not entitled to the parity of the pay scales as per the executive instructions of the Government ? It is not also in dispute that all the persons who filed the writ petition along with the Appellant had later withdrawn from the writ petition and thereafter the Respondent-management paid the salaries on par with the Government employees. Since the Appellants are insisting upon enforcement of their right through the judicial pressure, they need and seek the protection of law. We are of the view that the State has obligation to provide facilities and opportunities to the people to avail of the right to education. The private institutions cater to the needs of the educational opportunities. The teacher duly appointed to a post in the private institution also is entitled to seek enforcement of the orders issued by the Government. The question is as to which forum one should approach. The High Court has held that the remedy is available under the Industrial Disputes Act. When an element of public interest is created and the institution is catering to that element, the teacher, the arm of the institution is also entitled to avail of the remedy provided under Article 226; the jurisdiction part is very wide. It would be different position, if the remedy is a private law remedy. So, they cannot be denied the same benefit which is available to others. Accordingly, we hold that the writ petition is maintainable. They are entitled to equal pay so as to be on par with Government employees under Article 39(d) of the Constitution.

(Emphasis applied)

16. In *Andi Mukta's* case (supra), the appellants was a public Trust running a Science College at Ahmedabad. The College was affiliated to the Gujarat University. The University teachers and those employed in the affiliated colleges

were paid the same scale recommended by the University Grants Commission. Some dispute having arisen regarding payment of terminal benefits to the academic staff by the Appellant-management, the teachers approached the High Court for issuance of a writ in the nature of mandamus commanding the Trust and its Trustees to pay them their due pay and allowances. Provident fund and gratuity in accordance with the Rules framed by the University as also to pay them compensation etc. The Appellant-trust resisted the writ petition on the plea that it was not a statutory body, therefore, was not amenable to the writ jurisdiction of the High Court and that the resolution of the University directing the payment to the teachers in the revised pay scales was not binding on it. The High Court rejected these contentions and allowed the writ petition. Before the Hon"ble Supreme Court, two questions, namely, (i) liability of the Trust to pay compensation under Ordinance 120-E; (ii) the maintainability of the writ petition for mandamus against the management of the College, were raised. In the context of second question aforementioned, it was argued that the Appellant-trust was registered under the Bombay Public Trust Act and was not a statutory body and the College run by it was a private institution, therefore, a writ against it was not maintainable. On a consideration of the issue, their Lordships held as under:

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 institution 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.

(Emphasis applied)

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

statute. It may be sufficient for the duty to have been 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.

17. To contend that the management of the Respondent-school is not amenable to writ jurisdiction of this Court and/of the Petitioner cannot be granted the relief of reinstatement in service and can at the best claim damages even if termination of services is held to be wrongful, Shri B.M. Lal, Learned Counsel for Respondents Nos. 2 and 3 has relied upon (i) G. Basi Reddy Vs. International Crops Research Instt. and Another, ., (ii) Integrated Rural Development Agency Vs. Ram Pyare Pandey, ., (iii) Smt. J. Tiwari v. Jawala Devi Vidya Mandir and Ors. 1979 (1) S.L.R. (S.C.) 614., (iv) Executive Committee of Vaish Degree College, Shamli and Ors. v. Lakshmi Narain and Ors. AIR 1976 S.C. 888., (v) R.D., Sharma v. St. John's High School and Ors. 2002 (3) R.S.J. Pb. & Hy. 398., as well as the judgment in Andi Mukta's case (supra) which has been relied upon by the Learned Counsel for the Petitioner as well.

18. In G. Bassi Reddy's case (supra), the Supreme Court held that writ under Article 226 of the Constitution lies only when the Petitioner establishes that his fundamental right or some other legal right, has been infringed. Their Lordships further held as under:

28. A writ under Article 226 can lie against a "person" if it in a statutory body or performs a public function or discharges a public or statutory duty (Praga Tools Corpn. v. C.A. Imanual, Shri Andi Mukta Sadguru Trust v. V.R. Rudani SCC. 698 and VST Industries Ltd. v. Workers, Union) ICRISAT has not been set up by a statute nor are its activities statutorily controlled. Although, it is not easy to define what a public function or public duty is, it can reasonably be said that such functions are similar to or closely related to performance of obligations owed by a company towards its workmen or to resolve any private disputes. (See Sohan Lal v. Union of India).

19. In Integrated Rural Development Agency's case (supra), their Lordships took notice of the fact that Integrated Rural Development Agency was registered under the Societies Registration Act; it has its own Articles of Association and has framed its own Rules there under; there was no material on record that it was constituted under the statute or is owned or controlled by the State Government or an instrumentality of the State, therefore, the relationship between the Integrated Rural Development Agency and the Respondent-employee was based on contract and was purely one of Master and Servant. Relying upon the judgment in Nandganj Sihori Sugar Co. Ltd., Rae Bareli and another Vs. Badri

Nath Dixit and others, ., their Lordships held that the relief of reinstatement could not be granted as by affording the relief of reinstatement or back wages, will, in fact, be granting a specific performance of contract of service; which could be done only in the exceptional or rare cases.

20. In Smt. J. Tiwari's case (supra), the Appellant was appointed as Headmistress of Jwala Devi school by the Respondent-society registered under the Societies Registration Act, 1860. The Appellant in that case was dismissed from service as an out-come of certain disciplinary proceedings. She challenged the order of dismissal in a civil suit where even after returning the finding that the order terminating her services was unlawful, the High Court held her entitled to a decree of damages only, in stead of declaration that she continues to be in service of the society. On an appeal before the Apex Court, seeking the relief of reinstatement, their Lordships held as under:

4. We are unable to accept the contention strenuously advanced before us by the Appellant's Learned Counsel that Respondent No. 1 is a public body or a statutory authority and therefore the Appellant would be entitled to obtain a declaration that she continued to be in the service of Respondent 1 since the order terminating her service has been found to be unlawful. The Regulations of the University or the provisions of the Education Code framed by the State Government may be applicable to Respondent 1 and if the provisions thereof are violated by Respondent 1, the University may be entitled to disaffiliate the institution and the Government may perhaps be entitled to withdraw the education grant payable to the institution. That does not, however, mean that Respondent is a private institution which is registered under the Societies Registration Act 1860. It was established by one Nand Lal, a retired Deputy Collector, who names it after his wife Smt. Jwala Devi. The Society was established for the purpose of managing the institution.

21. In the case of Vaish Degree College (supra), which was run by a society registered under the Societies Registration Act, the services of the Respondent-Principal of the College were terminated by the Appellant-society which caused initiation of proceedings in a civil suit. Rejecting the claim of reinstatement in services, the Supreme Court held as under:

17. On a consideration of the authorities mentioned above, it is, therefore, clear that a contract of personal service cannot ordinarily be specifically enforced and a Court normally would not give a declaration that the contract subsists and the employee, even after having been removed from service can be deemed to be in service against the will and consent of the employer. This Rule, however, is subject to three well recognised exceptions-(i) where a public servant is sought to be removed from service in contravention of the provisions of Article 311 of the Constitution of India; (ii) where a worker is sought to be reinstated on being dismissed under the Industrial Law; and (iii) where a statutory body acts in breach or violation of the mandatory provisions of the statute.

22. In R.D. Sharma's case (supra), the Petitioner was appointed as a Teacher in St. John's High School, Chandigarh on 4th April, 1989. However, his services were terminated,--vide order dated 29th March, 1994 by invoking Clause (e) of the General Rules for the administration of Christian Brothers School, namely, the requirements framed by the management of the school which was a Society registered under the Societies Registration Act. A preliminary objection regarding the maintainability of the writ petition having been taken by the Respondents and after discussing the relevant case law on the subject, the learned Single Judge of this Court held as under:

8. In my opinion a writ of mandamus is maintainable against a private institute even though it does not get aid and its duty runs shoulder to shoulder with a duty which is performed by a public institution. To clarify this aspect of the case, if a dispute involved in a particular case with regard to the admission or education or with regard to the pay of a member of the staff, in such a situation a writ under Article 226 is maintainable because imparting of education by a private institution is such a duty which is also being performed by the public institutions. In other words mere label of a private institution will not oust the jurisdiction of the High Court under Article 226 of the Constitution. We have to see what is being agitated or claimed by the writ Petitioner. If a writ Petitioner complains with regard to the deprivation of the admission or equal pay for equal work or remuneration at par with the Government aided institution, in such a situation the High Court will entertain the petition. But if the controversy involved in a particular writ petition is purely a service matter pertaining to the service conditions of a private contract, in such a situation if there is any breach, the High Court will not issue a mandate under Article 226 of the Constitution. The distinction, in my opinion, is patent and clear. In the present case the alleged cause of action arose to the Petitioner when his services had been terminated in an illegal manner without adopting the principles of natural justice. This is an alleged breach of contract of service on the part of St. John's High School which is a private institute not even aided by the Government. In such eventuality the remedy of the Petitioner lies somewhere else either under the general law or he may file a suit for damages in the competent court of jurisdiction.

23. It appears to me from the above quoted case-laws that power to issue a writ under Article 226 of the Constitution is no longer confined to the restricted arena of statutory authorities or instrumentalities of the State. Even a person or body performing public duty can also be commanded with an appropriate writ. If it is found that the right to perform public duty has been conferred upon a private body either by the State or by its instrumentalities or by some statutory authority, such private body can always be commanded to adhere to the philosophy of Article 14 of the Constitution of India. The Statutory Authorities like a University, Medical Council of India or AICTE which are empowered to recognise and/or affiliate a private institution can also be commanded to ensure that such private body recognised and/or affiliated with them, does not act in violation of Article 14 of the Constitution of India. Similarly, if it is found that the

institution has failed to carry out an obligation under the Constitution of the Rules/Regulations framed by the affiliating Statutory Authority, it can always be compelled to perform the public duty through an appropriate writ. If an interest has been created by the Government in a private institute imparting education either by prescribing the service conditions of employees of such institute or by providing financial assistance in terms of grant-in-aid, the teachers who impart education get an element of public interest in the performance of their duties and such an element of public interest requires that the conditions of their service are properly regulated. The Government aided institutions without any exception discharge public functions by way of imparting education and they being subject to the Rules and Regulations of the affiliated University, employment in such institutions is not devoid of any public character. If the Government or its authorities or a statutory body recognising such private Government-aided educational institutions, takes a decision to regulate the service conditions of employees of such private institutions, the relationship of Master and Servant between the employees of such private institutions would not remain purely of a private character. The protection granted to such relationship by enacting Rules/Regulations would be sufficient to command the Management (s) through a writ of mandamus, if so required. However, if an office/ post is essentially of a private character, neither a writ in the nature of certiorari to quash the order of termination nor a mandamus to order reinstatement would lie to secure the performance of obligations by a body towards its employees or to resolve a private dispute. Similarly, if the relationship between the employer and the employee is based on contract and was purely one of Master and Servant, the relief of reinstatement cannot be granted as it would amount to granting specific performance of contract of service which is prohibited in law. Still further, a private institution even if recognised or affiliated with a statutory body like University, though purely private in character being a Society registered under the Societies Registration Act, 1860, no declaration of continuation in service can be granted in favour of its employee even if the termination of employment is found to be unlawful though in such a case, the affiliating statutory authority like University might be entitled to disaffiliate the institution but the relief of reinstatement to an employee into service has not been recognised.

24. What, therefore, clearly emerges is that so far as the activities and functions of a private body of a person in relation to performance of public duty are concerned, the same are amenable to the writ jurisdiction notwithstanding the pure private character of such body and/or a person and they can always be commanded to perform such duties in consonance with Articles 14 and 21-A of the Constitution of India or other provisions of the Rules/Regulations. However, the functions and activities of such institutions relating to recruitment of their staff, governance of service conditions of such staff or other internal management related affairs are of purely private character and these are not relatable to the "public duty" which such institution/body or a person perform.

25. The employment of teachers or other staff on certain terms and conditions,

administration of such teachers/staff through a set of self evolved Rules/Regulations of the private body without any protective umbrella of State or Statute at the best confer rights which are purely of private character and any infringement or breach of such rights cannot be corrected through a writ of mandamus. I have, therefore, no doubt in my mind that if the dispute involved in a particular case relates to the "public duty" performed by a private institute/body, writ petition under Article 226 of the Constitution is maintainable and it can always be commanded to perform the public duty in consonance with the Constitution of India, Rules and Regulations as well as just and fair principles. Even if a private school does not receive any grant in aid from the State nor does its admissions are regulated by a statute, yet it cannot be permitted to make admissions on the criterion like caste, race or sex etc. in violation of the mandate of our Constitution and any such action of the private body/institute can be declared illegal. However, the teachers or other employees of such private institute/body can neither claim parity with their counterparts in Government institutions nor a writ can be issued to such private body institute for the purpose of regulating service conditions of such employees. The nature of relief sought in a petition under Article 226 of the Constitution, therefore, has material bearing to determine as to whether a private institute/body is amenable or not to the writ jurisdiction of the High Court. So long as the relief is confined to the performance of public duty, the writ shall always lie but once it crosses over to the field of service conditions of the teachers/ employees of such institution or into the internal affairs relating to the management of such institute/body, no relief under Article 226 of the Constitution can be granted except where there is some statute, Rules/Regulations framed under the statute or even an executive order of the State Government regulating such service conditions and/ or affairs of the institute.

26. Applying the aforementioned principles to the facts and circumstances of the present case, it is seen that Yadvindra Public School Association is a Society registered under the Societies Registration Act, 1860. The Respondent-school run by the said Society does not receive any grant in aid from the State Government. In fact, it has not even been recognised by the Government of Punjab. The Society manages its affairs from its own funds and has framed own Regulations to govern the service conditions of its employees. There is no statute or government order granting any direct or indirect protection to the employees including the teachers of the Respondent-school. It is a private body and the relationship between the Petitioner and the Respondent-school is purely that of Master and Servant. In my view, the Respondent-school shall certainly be amenable to the writ jurisdiction of this Court so far as its activities in relation to public duty of imparting education are confined. However, no writ can be issued to the Respondent-school or its management in relation to the terms and conditions of service of the employees or any breach thereof. No writ, therefore, can be issued either to quash the order of termination dated 25th March, 1996 (Annexure P-12) nor can the Respondent-school be commanded by way of a writ

of mandamus to reinstate the Petitioner into service.

27. Faced with this situation, Shri Rajiv Atma Ram, learned Senior Counsel appearing for the Petitioner contended that the school is affiliated and is duly recognised by Council for the Indian School Certificate Examinations, New Delhi (for short, the ICSE) and it is one of the mandatory conditions for granting affiliation that the school shall produce a "No Objection Certificate" from the State Department of Education concerned. It has been further contended that a school seeking affiliation with ICSE is duty bound to comply with the conditions laid down in the "Guide-lines for the Affiliation" including Clause 5 of the Chapter 1 thereof wherein it is provided that the conditions of service, salaries, allowances and other benefits of the staff must be comparable to that prescribed by State Department of Education.

28. Before dealing with the argument, it will be appropriate to refer to Clauses 2 and 5(a)(b)(c) of Chapter 1 of the "Guide-lines for Affiliation" issued by ICSE which read as under:

No Objection Certificate:

2. Schools seeking affiliation to the Council for its examinations will have to obtain a Certificate of Recommendation/No Objection Certificate from the State Department of Education concerned. Affiliation is processed on the basis of the Inspection report submitted to the Council by the Inspecting Officer deputed by the Chief Executive and Secretary—merely the issue of an N.O.C. is not the sole criterion or sufficient for grant of affiliation.

Teachng Staff:

5(a) The teaching staff must be properly qualified and trained. The Council has laid down the minimum qualifications for the teaching staff; If, however, the State Department of Education has prescribed other minimum qualifications the Council will take them into consideration in deciding the affiliation of the School.

(b) The conditions of service, salaries, allowances and other benefits of the staff, must be comparable to that prescribed by the State Department of Education.

(c) The Managing Committee of the school shall enter into a written contract of service with every employee of the school. The contract of service shall incorporate the following aspects:

(i) the terms and conditions of service of the employee including the scale of pay and other allowances, to which he/she shall be entitled.

(ii) the different categories of leave of absence, age of retirement, provident fund, pension, gratuity, medical and other benefits to which the employee shall be entitled;

(iii) the penalties which could be imposed on the employee for the violation of any Code of Conduct or the breach of any of the terms of the contract entered

into by him/her.

(iv) the manner in which disciplinary proceedings, in relation to an employee, shall be pursued before he/she can be dismissed, removed from service or reduced in rank.

(v) arbitration of any dispute arising out of any breach of contract, between the employee and the Managing Committee, with regard to the scales of pay and other allowances, leave of absence, age of retirement, pension, gratuity, provident fund, medical and other benefits, any disciplinary action leading to the dismissal or removal from service or reduction in rank of the employee or any other matter or must be, specified in such contract.

29. On a plain reading of the above reproduced provisions of the "Guide-lines for Affiliation" published by ICSE, I am of the view that the requirement of "No Objection Certificate" from the State Department of Education by a school for getting affiliated with ICSE, does not clothe such an institute with the status of instrumentality of the State nor Clause 5 reproduced above, confers legal right upon a teacher enforceable through writ jurisdiction of this Court to compel the management of such private body to prescribe the conditions of service which must be comparable to their counter-parts in the State Government. Assuming that for getting itself affiliated with ICSE, the management of a private institute prescribes the service conditions which are comparable to one prescribed by the Education Department of State Government and if there is any breach or violation of such service conditions, still, in my view, no legally enforceable right is conferred upon the affected teacher though it may give a cause to ICSE to disaffiliate the school. The impugned order, therefore, cannot be interfered with by this Court on the strength of the guide-lines for affiliation issued by the ICSE.

30. Shri Rajiv Atma Ram, learned Senior Counsel appearing for the Petitioner also made a half-hearted attempt to press into the provisions of the Punjab Privately Managed Recognised Schools Employees (Security of Service) Act, 1979 (hereinafter referred to as "the 1979 Act), and the 1981 Rules framed there under. According to him, the procedure prescribed for taking disciplinary action against the teachers of a recognised school as provided in the 1981 Rules equally applies to the teachers of unaided private schools as well if such Schools are recognised by the State Government. Since the State Government has granted a "No Objection Certificate" to the Respondent-school for getting its affiliation with the ICSE, it amounts to recognition of Respondent-school by the Government of Punjab, contends Shri Rajiv Atma Ram, and as such the mandatory procedure laid down in the 1981 Rules for initiating disciplinary action was required to be followed before the services of the Petitioner could be terminated by attributing a specific misconduct and such a procedure, admittedly, having not been followed, the impugned action is vitiated in law.

31. Shri B.M. Lal, Learned Counsel appearing for Respondents No. 2 and 3, however, has contended that in view of the definition of an "aided Post" in

Section 2(a), "employee" in Section 2(c) read with the definition of "recognised school" in Section 2(g) of the 1979 Act, there remains hardly any doubt that the provisions of the aforementioned Act and the Rules framed there under are attracted only in the case of the employees of those private schools only which are duly recognised and receiving grant-in-aid from the State. To appreciate the controversy, Section 2(a),(c) and (g) are reproduced below:

2(a) "aided post" means the post on the establishment of a privately managed recognised school against which such a school gets grant-in-aid from the State Government:

2(c) "employee" means any person employed on an aided post in any privately managed recognised school for hire or reward (whether the terms of employment be express or implied) and for the purposes of any proceedings under this Act in relation to any employment dispute includes the person dismissed or removed from service but does not include a part-time employee.

2(g) privately managed recognised school" means a school, which is not run by the Central Government, the State Government, a local authority or any other authority designated or sponsored by the Central Government, State Government or local authority, as the case may be, and is recognised by the State Government for imparting pre-primary, primary, middle, high and higher secondary education or training below the degree level, but does not include an institution which imparts technical education.

32. On a plain reading of the aforesaid provisions, there is no doubt in my mind that the provisions of the 1979 Act and the 1981 Rules framed there under are attracted only in the case of the employees of Government aided and recognised private schools but the Respondent-school neither receives grant-in-aid nor has been recognised by the State of Punjab. The same, therefore, does not come within the ambit of the 1979 Act. I, therefore, find no merit in this contention as well.

33. Since I have taken a view that no writ is maintainable against alleged breach of contract of service which is purely of private in nature, I do not find any necessity of going into the ancillary argument raised by Shri Rajiv Atma Ram, Learned Counsel for the Petitioner that Regulation 7 of the Regulations framed by the management of the Respondent-school is arbitrary and does not stand to the test of Articles 14 and 16 of the Constitution of India. In my considered view, the Petitioner is not competent to invoke the writ jurisdiction of this Court to seek a writ of certiorari for quashing the order dated 25th March, 1996 (Annexure P-12) whereby her services were terminated nor can seek a writ of mandamus to compel the Respondent-school to take her back into service as it will amount to enforcing the contract of personal service. If the Petitioner successfully proves that her services were terminated in an unlawful manner, she can at the best, claim damages before an appropriate forum.

34. In view of what has been stated above, I find no merit in this petition. The

same is dismissed but with no order as to costs.