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**(2022) 01 GAU CK 0053**

**In the Gauhati High Court**

**Case No :** Writ Petition (Civil) No. 5671, 6445 Of 2018

Mukti Nath Gogoi

APPELLANT

Vs

State Of Assam And 8 Ors

RESPONDENT

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**Date of Decision :** 21-01-2022

**Acts Referred:**

Constitution Of India, 1950 — Article 12, 14, 30(1), 226  
Girijananda Chowdhury Institute Of Management & Technology, Guwahati Service & Conduct Rules, 2014 — Rule 9(a)  
Assam Venture Educational Institutions (Provincialisation of Services) Act, 2011 — Section 2(s)

**Citation :** (2022) 01 GAU CK 0053

**Hon'ble Judges :** Michael Zothankhuma, J

**Bench :** Single Bench

**Advocate :** I H Saikia

**Final Decision :** Dismissed

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## **Judgement**

1. Heard Mr. I.H. Saikia, learned counsel for the petitioner. Mr. B. Chakraborty for the respondent Nos. 3 to 7 and Mr. S. Bhuyan appears for the

respondent Nos. 1 & 2. No one appears for the respondent Nos. 8 & 9.

2. The petitioners in both the writ petitions have made a challenge to the letters dated 23.06.2018 issued by the respondent No. 4, by which their

services have been terminated. However, before going into the question of the validity of the termination letters, the issue that has to be first decided is

as to whether Girijananda Choudhury Institute of Management & Technology, Hatkhowapara (in short "the Institute") and the Society which runs

it, i.e. the Shrimanta Shankar Academy, can be construed to be a State under Article 12 of the Constitution and even if held otherwise, whether it can

be held amenable as an authority under Article 226 of the Constitution.

3. In WP(C) No. 5671/2018, the petitioner has put to challenge the letter dated 23.06.2018 issued by the respondent No. 4, terminating the service of

the petitioner as Assistant Professor in the Department of Electronics & Telecommunication with immediate effect in terms of Clause 9 of the

petitioner's appointment letter dated 31.08.2012.

4. In WP(C) No. 6445/2018, the petitioner has put to challenge the letter dated 23.06.2018 issued by the respondent No. 4, terminating the service of

the petitioner as Assistant Professor in the Department of Applied Electronics & Instrumentation Engineering with immediate effect in terms of

Clause 9 of the petitioner's appointment letter dated 31.08.2012.

5. The petitioners' case in brief is that the petitioners were appointed as Assistant Professors in the Institute vide appointment letters dated

31.08.2012. The term and condition no.9 of the appointment of the petitioners as Assistant Professors, as provided in the appointment letters dated

31.08.2012 issued by the respondent no.4 states as follows:-

9. The service may be terminated by giving one month's notice without assigning any reason thereof.

6. While the petitioners were serving as Assistant Professors, the impugned letters dated 23.06.2018 were issued by the respondent No. 4, terminating

the petitioners' service as Assistant Professor, by giving them one month's salary in lieu of one month's notice, purportedly in terms of

Clause 9 of the appointment letters dated 31.08.2012.

7. The petitioners' counsel submits that one month's notice was not provided to the petitioner, prior to termination of his service by the

respondent No. 4 and the giving of one month's salary is not equivalent to giving of one month's notice, as the same is not contemplated in

terms of Clause 9 of the appointment letter dated 31.08.2012.

8. Mr. I.H. Saikia, the learned counsel for the writ petitioners, on the other hand, submits that the present writ petitions are maintainable and the

respondent No. 6 performs a public function i.e. it imparts education by providing courses in Management & Engineering for class 12 pass students.

He accordingly submits that the challenge by way of the writ petitions against the removal of the petitioners, who are faculty members of the

respondent No. 6 institution is thus maintainable and in support of his submission, he has relied upon the judgments of the Apex Court in Ramesh

Malwari Vs. State of Punjab &Ors., 2012 AIOL 622 and in the case of Janet Jeyapaul Vs. SRM University, reported in (2015) 13 Scale 622 and

Binny Ltd Vs. V. Sadasivans, reported in (2005) 6 SCC 657.

9. The counsel for the respondent Nos. 3 to 7, on the other hand, submits that the giving of one month's salary tantamounts to giving one

month's notice, prior to termination of the petitioner's service, in terms of Clause 9 of the appointment letter dated 31.08.2012 and in terms of

Rule 9(a) of the Girijananda Chowdhury Institute of Management & Technology, Guwahati Service & Conduct Rules, 2014. He also submits that prior

to deciding the above issue, this Court would first have to decide as to whether the writ petitions are maintainable against an unaided private

Institution. He submits that the respondent No. 6 being a private Institution where the Government has no role to play, the writ petition is not

maintainable and would have to be dismissed. He also submits that as an alternative remedy is available, the petitioners should avail the same.

10. The counsel for the respondent Nos. 3 to 7 submits that the respondent No. 6 Institution is not governed by any Statutory Act or Rule and that the

termination of service of its Faculty members is not a public function. Further, the respondent No. 6 being a stand-alone Institution in the State of

Assam, the imparting of the course of Management and Engineering is restricted only in the State of Assam. He accordingly submits that in view of

the various judgments of the Apex Court, the writ petitions should be dismissed as being not maintainable and the writ petitioners can approach the

Educational Tribunals that have been created in the State of Assam, in pursuance to the Full Bench judgment of this Court in Abdul Gofur Mondal Vs.

State of Assam, reported in 2015 2 GLT 337. In support of his submissions, the learned counsel for the respondent Nos. 3 to 7 has relied upon the

judgments of the Apex Court in Committee of Management, Delhi Public School &Anr. Vs. M.K. Gandhi &Ors., reported in (2015) 17 SCC 353,

Trigun Chand Thakur Vs. State of Bihar &Ors., reported in (2019) 7 SCC 513 and Satimbla Sharma &Ors. Vs. St Paul's Senior Secondary

School &Ors., reported in (2011) 13 SCC 760 and the Division Bench judgment of this Court in W.A. No. 329/2018 (M/s Rajlakshmi Drugs Vs.

Numaligarh Refinery Ltd.& 5 Ors.)

11. Mr. S. Bhuyan, learned counsel for the respondent Nos. 1 & 2 submits that

the respondent No. 6 being a private unaided Institution where the Government is not involved in its functioning (administrative control), a writ petition does not lie against the respondent No. 3 and 6. He accordingly submits that the writ petitions should be dismissed.

12. I have heard the learned counsels for the parties.

13. In the case of Ramesh Ahluwalia Vs. State of Punjab &Ors., reported in 2012 AIOL 622, the Apex Court While considering the judgment of the

Apex Court in *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others vs. V.R. Rudani and*

*Others*, reported in (1989) 2 SCC 691 has held that even a purely private body, where the State has no control over its internal affairs, would be

amenable to the jurisdiction of the High Court under Article 226 of the Constitution, for issuance of a writ of mandamus, provided the private body is

performing public functions, which are normally expected to be performed by the State Authorities. It thus held that the proposition that a writ petition

would not be maintainable merely because the institution was a purely unaided private institution was not sustainable.

14. In *Andi Mukta S.S.M.V.S.S.J.M.S. Trust (supra)*, the services of lecturers had been terminated by a college which had temporary affiliation with

the Gujarat University under the Gujarat University Act, 1949 and from 15.06.1973, the college had permanent affiliation under the Gujarat University

Act, 1949, as amended by the Gujarat Act 6 of 1973. The University teachers were paid as per the pay scale recommended by the University Grants

Commission (UGC). When the University issued a direction to all the affiliated college to pay their teachers in terms of the pay scales applicable to

the University teachers as per the UGC norms, the management refused and closed down the college. The teachers of the college did not agitate for

continuance of their services but only for payment of their dues, as was payable to them as per the UGC pay scale. The Apex Court in the above

case framed two issues for consideration. One being the liability of the management to pay compensation under the Ordinance 120-E and the other

being the maintainability of the writ petition for mandamus against the management of the college. The Apex Court held that if the rights are purely of

a private character no mandamus can be issued. It also held that if the management of the college is purely a private body with no public duty,

mandamus will not lie. However, as the affiliated college was being given public money by way of Government aid, the same played a major role in

the control, maintenance and working of the educational institution and as the aided institution discharged public function, by way of imparting

education to students, they were subject to the rules and regulations of the affiliating University. In view of the above reasons, the Apex Court held

that the writ petition against the management of the college was maintainable.

15. In view of the fact that in the case of *Andi Mukta S.S.M.V.S.S.J.M.S. Trust* (supra), the issue was with regard to payment of dues of Teachers

of an affiliated College, which was being given money by way of Government aid, which in turn played a major role in the control, maintenance and

working of the educational institution, there seems to be a major difference with the facts of the case in *Ramesh Ahluwalia* (supra), which was a

purely un-aided private institution.

At the cost of reputation, it may be stated that though the Apex Court in *Ramesh Ahluwalia* (supra) has relied upon the judgment of the Apex Court in

*Andi Mukta S.S.M.V.S.S.J.M.S. Trust* (supra), which was a Government aided private institution, the institution that was being considered in *Ramesh*

*Ahluwalia* (supra) was an un-aided private institution.

16. In the above *Andi Mukta S.S.M.V.S.S.J.M.S. Trust* (supra), the Apex Court also considered two decisions of the Apex Court, which are

*Executive Committee of Vaish Degree College, Shamli vs. Lakshmi Narain*, reported in (1976) 2 SCC 58 and *Deepak Kumar Biswas vs. Director of*

*Public Instructions*, reported in (1987) 2 SCC 252. It was contended in the case of *Executive Committee of Vaish Degree College, Shamli* (supra) that

the Executive Committee of the college which was registered under the Cooperative Societies Act and affiliated to the Agra University and

subsequently to Meerut University was a statutory body. The Apex Court in the above case held that reinstatement can be ordered if the dismissal

was in violation of the statutory obligation. It was observed that the management of the college was not a statutory body since it was not created by or

under a statute. The Apex Court also emphasized that an institution which adopt certain statutory provisions will not become a statutory body and the

dismissed employee cannot enforce a contract of personal service against a non

statutory body.

In the case of Deepak Kumar Biswas (supra), a dismissed lecturer of a private college was seeking reinstatement in service. The Apex Court refused

to grant relief although it was found that the dismissal was wrongful. The Apex Court however granted substantial monetary benefits to the lecturer.

The Apex Court in *Andi Mukta S.S.M.V.S.S.J.M.S. Trust* (supra) thus held that the preponderant judicial opinion for not interfering with dismissal of a

lecturer of a private un-aided college was because of the common law principle that service contract cannot be specifically enforced.

17. The Apex Court in *Janet Jeyapaul Vs. SRM University & Ors.*, reported in 2015 (13) Scale 622 held that when a private body exercises its public

functions even if it is not a State, the aggrieved person has a remedy, not only under the ordinary law, but also by way of a writ petition under Article

226 of the Constitution. In the case of *Binny Ltd. & Anr. Vs. V. Sadasivan*, reported in 2005 (6) SCC 657, the Apex Court held that Article 226 of the

Constitution is couched in such a way that a writ of mandamus could be issued even against a private authority. However, such private authority must

be discharging a public function and that the decision sought to be corrected or enforced must be in the discharge or public function.

18. Paragraph No. 11 of the judgment in *Binny Ltd. & Anr. Vs. V. Sadasivan* (Supra) is reproduced below:-

“Judicial review is designed to prevent the cases of abuse of power and neglect of duty by public authorities. However, under our

Constitution, Article 226 is couched in such a way that a writ of mandamus could be issued even against a private authority. However, such

private authority must be discharging a public function and that the decision sought to be corrected or enforced must be in discharge of a

public function. The role of the State expanded enormously and attempts have been made to create various agencies to perform the

governmental functions. Several corporations and companies have also been formed by the government to run industries and to carry on

trading activities. These have come to be known as Public Sector Undertakings. However, in the interpretation given to Article 12 of the

Constitution, this Court took the view that many of these companies and corporations could come within the sweep of Article 12 of the

Constitution. At the same time, there are private bodies also which may be discharging public functions. It is difficult to draw a line between

the public functions and private functions when it is being discharged by a purely private authority. A body is performing a "public

function" when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that

section of the public as having authority to do so. Bodies therefore exercise public functions when they intervene or participate in social or

economic affairs in the public interest. In a book on Judicial Review of Administrative Action (Fifth Edn.) by de Smith, Woolf & Jowell in

Chapter 3 para 0.24, it is stated thus:

A body is performing a "public function" when it seeks to achieve some collective benefit for the public or a section of the public and is

accepted by the public or that section of the public as having authority to do so. Bodies therefore exercise public functions when they

intervene or participate in social or economic affairs in the public interest. This may happen in a wide variety of ways. For instance, a body

is performing a public function when it provides "public goods" or other collective services, such as health care, education and personal

social services, from funds raised by taxation. A body may perform public functions in the form of adjudicatory services (such as those of

the criminal and civil courts and tribunal system). They also do so if they regulate commercial and professional activities to ensure

compliance with proper standards. For all these purposes, a range of legal and administrative techniques may be deployed, including: rule-

making, adjudication (and other forms of dispute resolution); inspection; and licensing.

Public functions need not be the exclusive domain of the state. Charities, self-regulatory organizations and other nominally private

institutions (such as universities, the Stock Exchange, Lloyd's of London, churches) may in reality also perform some types of public

function. As Sir John Donaldson M.R. urged, it is important for the courts to "recognise the realities of executive power" and not allow

their vision to be clouded by the subtlety and sometimes complexity of the way in which it can be exerted". Non-governmental bodies such

as these are just as capable of abusing their powers as is government.

A reading of the above extract shows that the decision sought to be corrected or enforced must be in the discharge of a public function. No doubt, the

aims and objective of the respondent No. 3 and the Girijananda Choudhury Institute of Management & Technology is to impart education, which is a

public function. However, the issue herein is with regard to the termination of service of the petitioners, which is basically a service contract. A body

is said to be performing a public function when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by

the public or that section of the public as having authority to do so.

19. In the case of *Marwari Balika Vidyalaya vs. Asha Srivastava*, reported in (2020) 14 SCC 449, the question for consideration was as to the

maintainability of a writ petition against a private school receiving grant-in-aid to the extent of dearness allowance. The Apex Court held that the writ

petition is maintainable in the above case.

20. In the case of *Committee of Management, Delhi Public School & Anr. Vs. M.K. Gandhi & Ors.*, reported in (2015) 17 SCC 353, the Apex Court

held that no writ is maintainable against a private school as it is not a "State" within the meaning of Article 12 of the Constitution of India. In the

case of *Trigun Chand Thakur Vs. State of Bihar & Ors.*, reported in (2019) 7 SCC 513, the Apex Court upheld the view of the Division Bench of

Patna High Court which held that a teacher of privately managed school, even though financially aided by the State Government or the Board, cannot

maintain a writ petition against an order of termination from service passed by the Management Committee. In the case of *Satimbla Sharma & Ors.*

*Vs. St. Paul's Senior Secondary School & Ors.*, reported in (2011) 13 SCC 760, the Apex Court held that unaided private minority schools over

which the Government has no administrative control because of their autonomy under Article 30(1) of the Constitution are not State within the

meaning of Article 12 of the Constitution. As the right to equality under Article 14 of the Constitution is available against the State, it cannot be

claimed against unaided private minority private schools. In the case of *Satimbla Sharma Vs. St. Paul's Senior Secondary School*, reported in AIR

2011SC 2926, the Apex Court has held that unaided private schools over which the Government has no administrative control are not "State"

within the meaning of Article 12 of the Constitution.

21. In the present case, the pleadings show that the Girijananda Choudhury Institute of Management & Technology which is run by the respondent

No. 3, is an unaided Non-Government Educational Institution and though the Institution was established with the permission of the State Government

and approval of the All India Council for Technical Education, there is nothing to show that the Government has any role to play in running the internal

affairs of the Institute. Further there is nothing to show that the appointments of the faculty members of the said Institution required the prior approval

of the Government at the time of appointment or at the time of termination of their services. As such, this Court is of the view that the said Institute

cannot be construed to be a State under Article 12 of the Constitution and neither is it amenable to Article 226 of the Constitution.

22. In the case of Abdul Gofur Mondal (Supra), the question that was to be decided by the Full Bench was as to whether a writ petition would be

maintainable against a purely privately managed institution, such as, venture school contemplated in Section 2(s) of the Assam Venture Educational

Institutions (Provincialisation of Services) Act, 2011. During the proceedings of the case before the Full Bench, the Full Bench also formulated the

question as to whether a writ petition would be maintainable against a Non-Government Educational Institution as defined in 2(g) of the Assam Non-

Government Education Institutions (Regulation and Management) Act, 2006 hereinafter referred to as the "2006 Act" and the Assam Non-

Government Educational Institutions (Regulation and Management) Rules, 2007 hereinafter referred to as the "2007 Rules".

23. The Full Bench, after going through various judgments of the Apex Court held that under Article 226 of the Constitution of India, High Courts can

issue writs for enforcement of fundamental as well as legal rights. The expression "any person or authority" used in Article 226 is not confined to

statutory authorities and instrumentalities of the State. It also held that if a private body is discharging a public function and the denial of any right is in

connection with a public duty imposed on such body, the public law remedy can be enforced. Even the purely private body, over the internal affairs of

which the State has no control, would also be amenable to the jurisdiction under Article 226 of the Constitution, provided such private body is

performing public functions. The Full Bench thus held that the question as to whether a writ petition would be maintainable against the purely privately managed institutions, such as a venture school or a non-Government Educational Institution, would have to be determined with regard to whether the grievances expressed relate to discharge of public function and denial of any right in connection with public duty imposed on such body. The Full Bench also held that prior to provincialisation, the venture Educational Institutions remains a purely private Institution and that a writ application qua the State could be maintained, if the venture Institution was aggrieved by any action or inaction of the State, with regard to the Institution being left out of the provincialisation without any proper justification. Insofar as internal affairs of a venture Institution are concerned, it held that a writ petition against the Institution may not be maintainable. However, a writ petition could be maintainable against the Institution if there was a seniority dispute between two competing claimants having a bearing on their claim for provincialisation. The Full Bench then held that the statement of objects and reasons of the 2006 Act showed that it had become necessary to enact a law to regulate the unplanned and mushroom growth of Non-Government Educational Institutions and accordingly, the Full Bench issued a writ of mandamus to the State Government to establish Educational Tribunals in the Districts of Assam, to adjudicate disputes relating to the teaching and non-teaching staff of Non-Government Educational Institutions. It may be stated herein that the full Bench had decided the case of Abdul Gofur Mondal (Supra) on the basis of the Constitution Bench judgment of the Apex Court in the case of P.M.A Pai Foundation vs. State of Karnataka, reported in (2002) 8 SCC 481, wherein, the Apex Court had directed that Appellate Tribunals should be set up in each District of each State to hear appeals over the decisions taken by disciplinary bodies of even purely private educational institutions.

24. Subsequently, notification dated 03.12.2015 and Notification dated 02.06.2016 was issued by the Government of Assam, by which the Courts of the District Judges and Addl. District Judges in Assam were made to function as Educational Tribunals are reproduced below:

â??NOTIFICATION Dated 3rd December, 2015

No.ELC/WP (C) 2272/2013/403/194- In compliance or order dated 19th March,

2015 passed by the Honâ??ble High Court in WP (C) No.

4612/2011, WP (C) No. 6109/2012 and WP (C) No. 2272/2013 and as per recommendation of the Honâ??ble High Court, the Governor of Assam is

pleased to designate the Court of District Judges and Additional District Judges of each district to function as Educational Tribunals to adjudicate

disputes relating to the teaching and non-teaching staff of the non-government educational institution as well as disputes concerning disciplinary action

and claim for provincialisation in respect of teaching and non-teaching staff of venture educational institutions within their respective territorial

jurisdiction from the date of issue of this Notification.

Further, for this purpose, Governor of Assam is also pleased to include District of DimaHasao, KarbiAnglong and Baska within the jurisdiction of

District Judge Court of Cachar, Nagaon and Udalguri respectively, until further order.â??

â??NOTIFICATION

GOVERNMENT OF ASSAM

ELEMENTARY EDUCATION DEPARTMENT-DISPUR, GUWAHATI-6 No.ELC/WP (C) 2272/2013/403/196, Dated Dispur, the 2nd June, 2016

Sub: Regarding functions of Educational Tribunals.

Ref: Your endorsement dated 23/05/2016 in this Deptt. fileNo.ELC /WP Â© 2272/2013/403

Sir,

In inviting a reference to the above, I am directed to inform you that Govt.

Notification issued vide No.ELC WP (C) 2272/2013/403/194- dated 03/12/2-15, designating the Court of District Judges and Additional District Judges

of each district to function as Educational Tribunals to adjudicate disputes relating to the teaching and non-teaching staff of the Non-Govt. Educational

Institutions as well as disputes relating disciplinary action and claim for provincialisation, will be applicable in case of Secondary & Higher Education

Department also, from the date of publication of the above notification. A copy of the said Notification is enclosed herewith.

25. A reading of the judgment of the Full Bench in Abdul GofurMondal (Supra)and the subsequent notifications dated 03.12.2015 & 02.06.2016 issued

by the Government of Assam, shows that in so far as the matter pertains to the

internal affairs of an unaided Non-Government Educational Institution, a writ petition would not be maintainable against the unaided private Institution, as an alternative remedy is available to the petitioners. As the respondent no.4, i.e. the Girijananda Choudhury Institute of Management & Technology, run by the respondent no.3, is an unaided Non-Government Educational Institution, the petitioners' grievance with regard to termination of their services may be adjudicated before the Educational Tribunals.

The petitioners are accordingly given the liberty to approach the appropriate forum as indicated above.

26. In view of the above reasons, this Court holds that the writ petitions are not maintainable. The writ petitions are accordingly dismissed.