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**(2014) 04 KAR CK 0197**  
**In the Karnataka High Court**  
**Case No : Writ Petition No. 16316/2014 (S-RES)**

P.R. Bhaskar

APPELLANT

Vs

The Chairman and Managing Director

RESPONDENT

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**Date of Decision :** 05-04-2014

**Acts Referred:**

Constitution of India, 1950 — Article 12, 226  
Contract Act, 1872 — Section 23

**Citation :** (2014) 3 AKR 182

**Hon'ble Judges :** A.N. Venugopal Gowda, J

**Bench :** Single Bench

**Advocate :** Lakshman Rao, Advocate for the Appellant

**Final Decision :** Dismissed

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## Judgement

A.N. Venugopala Gowda, J.—Petitioner was a Manager of Nethradhama Super Speciality Eye Hospital Pvt. Ltd. He tendered resignation to the post on 18.12.2013. Having sent a E-mail on 19.12.2013 to the respondents about withdrawal of the resignation and followed by a letter of withdrawal dated 23.12.2013 and finding no response filed this writ petition, to declare that he is deemed to be in service throughout and consequently, is entitled to arrears of salary and other benefits.

2. Sri Lakshman Rao, learned advocate, contended that the resignation submitted having been withdrawn on the very next day and there being no resignation in the eye of law, in as much as there was no acceptance by the respondents, the petitioner is entitled to the relief.

3. Sri. Lakshman Rao, did not dispute the fact, that the respondent is not an "Authority" within the meaning of "other Authority" within the purview of Article 12 of the Constitution. Undeniably, the respondent is a private limited company, running a super speciality eye hospital and does not perform any public functions or discharge any public duty. The Hospital provides service which is available on

commercial charges. In view of the said undisputed position, this writ petition filed under Article 226 of the Constitution cannot be entertained.

4. In *Binny Ltd. and Another Vs. V. Sadasivan and Others*, , the material facts were that respondents 2 to 36, who were working as members of the management staff of the Appellant Company, which was engaged in manufacturing of cloth, having been terminated, writ petition was filed and the appellant Company contended that the writ petition was not maintainable, as it is a private company and decision to terminate the services of the employees cannot be the subject matter of judicial review. A declaration to the effect that the termination was illegal, having been passed, when assailed by the management, before the Apex Court, while allowing the appeal and leaving open the right of the employees to seek redressal of their grievance in the civil law or labour law enactments, it has been held as follows:

31. The decision of the employer in these two cases to terminate the services of their employees cannot be said to have any element of public policy. Their cases were purely governed by the contract of employment entered into between the employees and the employer. It is not appropriate to construe those contracts as opposed to the principles of public policy and thus void and illegal u/s 23 of the Contract Act. In contractual matters even in respect of public bodies, the principles of judicial review have got limited application. This was expressly stated by this Court in *State of U.P. and others Vs. Bridge and Roof Co. (India) Ltd.*, and also in *Kerala State Electricity Board and Another Vs. Kurien E. Kalathil and Others*, . In the latter case, this Court reiterated that the interpretation and implementation of a clause in a contract cannot be the subject-matter of a writ petition. Whether the contract envisages actual payment or not is a question of construction of contract. If a term of a contract is violated, ordinarily, the remedy is not a writ petition under Article 226.

32. Applying these principles, it can very well be said that a writ of mandamus can be issued against a private body which is not "State" within the meaning of Article 12 of the Constitution and such body is amenable to the jurisdiction under Article 226 of the Constitution and the High Court under Article 226 of the Constitution can exercise judicial review of the action challenged by a party. But there must be a public law element and it cannot be exercised to enforce purely private contracts entered into between the parties.

33. We are unable to perceive any public element in the termination of the employees by the appellant in Civil Appeal No. 1976 of 1998 and the remedy available to the respondents is to seek redressal of their grievance in civil law or under the labour law enactments especially in view of the disputed questions involved as regards the status of employees and other matters. So also, in the civil appeal arising out of SLP(Civil) No. 6016 of 2002, the writ petition has been rightly dismissed by the High Court. We see no merit in the contention advanced by the appellant herein. The High Court rightly held that there is no public law element and the remedy open to the appellant is to seek appropriate relief other

than judicial review of the action taken by the respondent Company.

5. Applying the above principles, in view of inability of Sri Lakshman Rao, to show that there is a public law element involved, the respondents being not "state or other Authority", within the meaning of Article 12 of the Constitution, are not amenable to the jurisdiction under Article 226 of the Constitution. Hence, this writ petition cannot be entertained.

In the result, the writ petition is rejected. However, the petitioner would be at liberty to seek redress by taking recourse to the normal remedies available under law.