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(2026) 08 J&K CK 0773

In the Jammu And Kashmir High Court, Srinagar Bench

Case No : WP (C) No. 1911/2019, CM No. 3660/2019, CM No. 7815/2024, CM No. 3575/2026

Showkat Yousuf Shah & Ors. APPELLANT

Vs

Union of India and Ors. RESPONDENT

Date of Decision : 05-08-2026

Acts Referred:
Constitution of India — Article 226, 12, 14, 16, 21

Citation : (2026) 08 J&K CK 0773

Hon'ble Judges : Shahzad Azeem, J

Bench : Single Bench

Advocate : M/s Anjum Ara and Asif Nabi, Advocates for the Petitioner(s); Mr Tahir Majid Shamsi, DSGI with Ms Yasmeen Jan, Advocate for the Respondent(s)

Final Decision : Dismissed

Judgement

01. Since the Respondents have raised a preliminary objection to the maintainability of the Writ Petition on the ground that Army Goodwill School, Wayne, Kupwara [Respondent-School], is neither "Government Department" nor a "Government aided Institution" and that a Petition under Article 226 of the Constitution is, therefore, not maintainable against it, it becomes necessary to first adjudicate the said preliminary objection before entering into the merits of the claims raised by the Petitioners.

02. The facts relevant for adjudication of the question of maintainability, stated briefly, are that the Petitioners were appointed from time to time as PRT/TGT/ PGT in the Respondent-School between the years 2013 and 2017. The Petitioners claim that they are holding substantive posts in the Respondent-School, which is affiliated with the Central Board of Secondary Education (CBSE) and are, therefore, entitled to the pay scale of ☐ 9300-34800 + GP Rs.4200, in accordance with the CBSE guidelines.

03. The Petitioners contend that after they represented for fixation of pay in

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terms of the CBSE scales, the management of the Respondent-School became hostile and initiated the process of holding interviews and making fresh appointments, thereby creating a real and imminent apprehension of illegal termination or substitution of their services. Apprehending such adverse action, the Petitioners have invoked the extraordinary Writ jurisdiction of this Court under Article 226 of the Constitution seeking a direction for their continuation in service on the ground that their services cannot be dispensed with without reasonable cause and that any such action would be violative of Articles 14, 16 and 21 of the Constitution. The Petitioners have additionally invoked the doctrine of legitimate expectation and have prayed for issuance of a 'Writ of Mandamus' directing payment of salary in accordance with the CBSE scales.

04. Learned Counsel appearing for the Petitioners, while arguing on the question of maintainability, has placed reliance on the Judgments of Hon'ble Supreme Court in: (i) "Bhola Nath v. The State of Jharkhand & Ors., 2026 SCC OnLine SC 129"; and (ii) "Kangra Central Cooperative Bank Pensioners Welfare Association (Registered) v. State of Himachal Pradesh & Ors., (2024) 14 SCC 697".

05. *Per Contra*, the Respondents have stoutly opposed the maintainability of the Writ Petition and contended that the Respondent-School is a self-financed Institution established under the aegis of "*Operation Sadbhavana*". It is neither a Government Department nor a Government-aided Institution, and consequently no Writ lies against it under Article 226 of the Constitution.

06. The Respondents further contend that the Petitioners were engaged purely on contractual basis under yearly contracts issued by the School Management Committee and the very terms of appointment expressly make the engagement contractual in character.

07. It is also urged that the CBSE guidelines themselves contemplate a "contract of service". In these circumstances, a Writ under Article 226 does not lie against a purely private or self-financed Institution for enforcement of a contract of personal service, unless a clear public or statutory duty is demonstrably shown to exist.

08. It is vehemently argued that contractual employees have no vested or indefeasible right to continuation, renewal or regularization of service beyond the contractual terms governing their engagement.

09. It is further canvassed at the Bar that the Petitioners, who are continuing in service solely under the orders of this Court, have created an atmosphere of indiscipline, which is adversely affecting the academic performance of the Institution, particularly of students of Classes 10th and 12th. Despite repeated counselling, the Petitioners have not mended their behavior and continue to create disturbances.

10. Mr Tahir Majid Shamsi, learned Deputy Solicitor General of India, appearing for the Respondents, in order to justify the preliminary objection to the

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maintainability of the Writ Petition against the Respondent-School, has placed reliance on the Judgment of the Hon'ble Supreme Court in "Army Welfare Education Society, New Delhi v. Sunil Kumar Sharma & Ors., (2024) 16 SCC 598".

11. I have heard learned Counsel for the parties at length on the question of maintainability of the Writ Petition and have carefully perused the pleadings and material available on record.

12. Before evaluating the applicability of the Judgments relied upon by the respective parties, certain foundational facts require notice. These facts are essential for determining whether the Judgments cited by either side are attracted to the facts and circumstances of the present case.

13. As per the guidelines and instructions contained in the Standard Operating Procedure (SOP), the Army Goodwill Public School, Wayne was established under "Operation Sadbhavana" with the object of providing quality education to the children of the Union Territory of Jammu & Kashmir. For smooth and effective functioning of the School, a comprehensive Standard Operating Procedure (SOP) has been framed comprising detailed guidelines and instructions. The Army Goodwill Education Society, registered under the Societies Registration Act XXI of 1860, has been constituted as the apex body for administration and management of the Army Goodwill School, Wayne, Kupwara.

14. These SOPs, *inter alia*, deal with classification, recruitment, qualifications and terms and conditions of service of employees. Paragraphs 80, 81, 82, 85, 86, 87 and 102 of SOPs predominantly govern the procedure for appointment of staff; engagement of temporary, part-time and honorary Teachers; filling up of temporary vacancies; pay and allowances; pay scales; revision of pay scales; and termination of services or resignation.

15. From the facts noted above, it is clearly discernible that the Respondent-School was established under "Operation Sadbhavana" and that, for the purpose of running the Institution, the Army Goodwill Education Society, registered under the Societies Registration Act, 1860, has been created. The Society has been mandated to constitute a School Management Committee for general supervision and day-to-day management of the School in accordance with the rules approved and directions issued from time to time by the apex governing body.

16. It is also specifically averred, and not denied, that the Respondent-School does not receive any annual financial assistance either from the Government or from any other statutory authority. The Institution is stated to be run through self-generated funds and support received from NGOs/ corporate foundations, besides receiving limited amounts under "Operation Sadbhavana".

17. Turning to the Judgments relied upon by the Petitioners, in *Bhola Nath* (*supra*), the Hon'ble Supreme Court directed the Respondent-State to regularise the services of the Appellants against the sanctioned posts to which they had initially been appointed. The direction was founded on the well-settled principle that the

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State cannot continue employees on sanctioned vacant posts for over a decade under the convenient label of "contractual engagement" and, thereafter, abruptly discontinue their services. It was specifically held that the State, as a model employer, cannot take advantage of the unequal bargaining power. The Hon'ble Supreme Court intervened in that case because the appointments were against regular sanctioned posts of Junior Engineers (Agriculture) in the Land Conservation Directorate of the Respondent-State. In the present case, however, the terms of employment of the Petitioners are governed exclusively by the contractual framework embodied in the SOP. The ratio of *Bhola Nath* (*supra*) is, therefore, clearly distinguishable and inapplicable to the facts of the present case.

18. The Petitioners have also placed reliance on the Judgment in *Kangra Central Cooperative Bank Pensioners Welfare Association* (*supra*). In that case, the challenge was directed against stoppage of pension by the Bank. The learned Single Judge held the Writ Petition maintainable on the facts of that particular case, in that, the State exercised deep and pervasive control over the Bank. While arriving on these findings, the learned Single Judge took into consideration the share of State and its control on the Bank. Though the Division Bench set aside this Judgment, but the Hon'ble Supreme Court held the Petition was maintainable and restored LPA for deciding it on merits. In any event, the findings recorded by the Writ Court in *Kangra Central Cooperative Bank Pensioners Welfare Association* (*supra*) rested on the specific composition of the Bank, the shareholding of the Government and the predominant role played by the State. Without establishing a similar factual foundation of deep and pervasive State control, the Petitioners cannot drive any benefit from the said Judgment.

19. Coming now to the Judgment relied upon by the Respondents in *Army Welfare Education Society, New Delhi* (*supra)*, the central issue that arose for consideration before the Hon'ble Supreme Court was whether the Army Welfare Education Society [AWES] assumes the description of "State" under Article 12 of the Constitution of India so as to render a Writ Petition under Article 226 of the Constitution maintainable against it. Framed differently, the questions were: (a) whether a pure service dispute between a private educational institution and its employees can be adjudicated under Article 226 of the Constitution; and (b) even if AWES is treated as a body performing a public duty, whether all its decisions are amenable to judicial review or only those decisions having a public law element therein can be judicially reviewed under the Writ jurisdiction.

20. The Appellant-AWES submitted before the Apex Court that Respondents were employees of a purely private unaided minority Institution; that there existed no privity of contract with AWES; that AWES is a wholly unaided private society whose finances are derived from fees and which receives neither any Government grant nor is subject to deep and pervasive Government control; that, while the function of imparting education to children is a public function, a dispute concerning continuity of service and service conditions of private employees falls squarely within the realm of a pure private contract; that a

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contract of purely personal service cannot be specifically enforced; and that compelling retention of pre-existing higher service conditions would create two classes of employees within the same Institution and, therefore, cause severe financial strain, particularly when the staff were already being paid salaries and allowances at par with other AWES employees, with increments for past experience.

21. In rebuttal, the Respondents contended that AWES is "State" under Article 12 for the reason that its address is shown as the Adjutant General's Branch in the Integrated Headquarters of the MoD (Army); that Board of Governors and Executive Committee comprise senior Army Officers, including Lt. Generals, COAS, GOCs-in-C; that the corpus and grants emanate from the welfare funds of the Adjutant General's Branch, Army Headquarters; that the Army Public School is affiliated with the CBSE and is governed by its norms including Bye-Laws requiring payment of salaries not less than the scales applicable to State or Central Government employees; that even if the Institution is private, the service conditions are regulated by statutory provisions and CBSE Bye-Laws, thereby making the dispute amenable to Writ jurisdiction; and that the Respondents had a legitimate expectation that their service conditions would not be unilaterally altered to their detriment upon a change in Management, they having never been consulted in the matter.

22. After an exhaustive consideration of the rival submissions and a comprehensive survey of the entire body of case law on the subject, the Hon'ble Supreme Court held that AWES is a private unaided society which is engaged in the function of imparting education that involves a public duty. However, the mere existence of a public duty does not automatically render every service dispute against such an Institution amenable to the Writ jurisdiction of the High Court under Article 226 of Constitution. It has been further held that the relationship between the Respondents and AWES is essentially that of a private employer and employee arising out of a private contract, and that the breach of such a contract does not involve any public law element. It is also reiterated that a contract of personal service cannot ordinarily be specifically enforced. In this regard, reference was made to the settled law laid down in: *Vaish Degree College v. Lakshmi Narain, (1976) 2 SCC 58; J. Tiwari v. Jwala Devi Vidya Mandir, (1979) 4 SCC 160;* and *Dipak Kumar Biswas v. Director of Public Instruction, (1987) 2 SCC 252*.

23. The Hon'ble Court further clarified that although the power conferred by Article 226 is wider in amplitude than Article 12 and extends to "any person" or "authority" performing a public duty, such jurisdiction can be exercised only when the dispute possesses a public law element or is governed or controlled by a statutory provision. Consequently, Writ jurisdiction is not available in purely service matters of private unaided educational institutions that are not controlled or governed by statutory provisions. The Apex Court traced this principle through the decisions in *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna*

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Jayanti Mahotsav Smarak Trust v. V. R. Rudani, (1989) 2 SCC 691; K. Krishnamacharyulu v. Sri Venkateswara Hindu College of Engg., (1997) 3 SCC 571; Satimbla Sharma v. St. Paul's Senior Secondary School, (2011) 13 SCC 760; and *St. Mary's Education Society v. Rajendra Prasad Bhargava, (2023) 4 SCC 498*.

24. After a threadbare discussion and after taking into consideration the entire evolution of the law on the subject, the Hon'ble Supreme Court held that the High Court committed an egregious error in entertaining the Writ Petition and treating AWES as a "State" within the meaning of Article 12 of the Constitution.

25. On the question of legitimate expectation, the Hon'ble Supreme Court held that the doctrine of legitimate expectation is essentially a public law doctrine evolved to check arbitrariness in State action. It does not govern private contractual relationship wherein the doctrine of promissory estoppel may apply. The doctrine of legitimate expectation was, therefore, held to be wholly inapplicable to the facts of that case.

26. The soul of the findings returned by the Hon'ble Supreme Court on the question whether AWES is "State" is that while the function of imparting education involves a public duty and therefore contains a public law element, the relationship between the Institution and its employees remains that of a private employer and employee arising out of a private contract. A pure service dispute of this nature does not involve any public law element. Consequently, the Writ jurisdiction under Article 226 of the Constitution is not available in respect of service matters of private educational Institutions that are neither controlled nor governed by any statutory provision.

27. The final conclusion culled out by the Hon'ble Supreme Court, on the basis of the law evolved up to the date of the Judgment, is that the School cannot be said to be discharging any public duty in connection with the employment of its teaching staff. The Apex Court further held that the CBSE affiliation Bye-Laws do not have statutory force, whereas, the School is affiliated to CBSE for the sake of convenience, mainly for the purpose of recognition and syllabus or the courses of study.

28. The Judgment of Hon'ble Supreme Court in *Army Welfare Education Society, New Delhi* (*supra*), on all fours, lends supports to the preliminary objection raised by the Respondents. The Respondent-School is neither a "Government Department" nor a "Government-aided Institution". Nor can it be regarded as "a person" or "authority" performing a public duty in connection with the employment of the Petitioners against which a 'Writ of Mandamus' can legitimately be issued.

29. Indisputably, the Respondent-School is a self-financed Institution established under the aegis of "Operation Sadbhavana". It is equally true that the Respondent-School is neither a creation of Statute nor are the service conditions of the Petitioners governed by any service rules having statutory force. The

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relationship between the Petitioners and the Respondent-School is, therefore, that of a private employer and employee governed solely by the contractual stipulations in the shape of guidelines and instructions contained in the SOP. Consequently, such SOP cannot be enforced under Article 226 of the Constitution, nor is the dispute amenable to judicial review under Writ jurisdiction.

30. From the series of Judgments discussed above, it is well settled that even if a body performing a public duty is amenable to the Writ jurisdiction of this Court, not all its decisions are subject to judicial review. Only those decisions which possess a public element can be subjected to judicial scrutiny under Article 226 of the Constitution. Where the action challenged lacks a public law element, a 'Writ of Mandamus' cannot be issued, as such action remains essentially of a private character.

31. For the foregoing reasons, the preliminary objection raised by the Respondents with regard to the maintainability of the Writ Petition succeeds. Consequently, the present Writ Petition is held to be non-maintainable and is, accordingly, dismissed. Interim direction(s), if any, subsisting as on date, shall stand vacated.

32. Pending application(s), if any, shall also stand disposed of, accordingly.

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