

(2025) 01 MP CK 1687

In the Madhya Pradesh High Court, Indore Bench

Case No : Writ Petition No. 935 of 2025

Vikram Singh

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 17-01-2025

Acts Referred:

Constitution of India 1950 — Article 226
Securitisation and Reconstruction of Financial Assets and Enforcement of Security
Interest Act, 2002 — Section 13, 13(2), 14
Transfer of Property Act, 1882 — Section 69, 69-A
Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2004
— Section 8
the Banking Regulation Act, 1949 — Section 9
Insolvency and Bankruptcy Code, 2016 — Section 251
Companies Act, 1956 — Section 529, 529-A

Citation : (2025) 01 MP CK 1687

Hon'ble Judges : Vivek Rusia, J Gajendra Singh, J

Bench : Single Bench

Advocate : Rohit Dubey, Sudeep Bhargava

Final Decision : Dismissed

Judgement

JUDGMENTTAG-JUDGMENT

Vijay Kumar Shukla, J

The petitioner has challenged the order dated 1.11.2024 issued by respondent No.4 whereby the petitioner has been directed to be superannuated at the age of 58 years with effect from 31.1.2025.

2. Counsel for State raises preliminary objection that the petition is not maintainable under Article 226 of the Constitution of India against the respondent No.4 which is a private company. The petitioner was a Workman and is challenging his superannuation.

3. Counsel for petitioner submits that the respondent No.4 is controlled by the

respondent No.1 and since the fundamental right of the petitioner regarding 'livelihood' is violated, therefore, writ petition is maintainable under; Article 226 of the Constitution of India. In support of his submission he has placed reliance on a judgment passed by the Apex Court in the case of Kaushal Kishore Vs. State of UP (2023) 4 SCC 1 and the judgment passed in the case of Zee Telefilms Ltd. Vs. Union of India (2005) 4 SCC 649.

4. The grievance of the petitioner is regarding the retirement before the age of superannuation as against the Rule 14-A of M.P. Industrial Employment Standing Orders. Counsel for petitioner submits that as per the Rule 14-A of the M.P. Standing Order Rules 1963, the petitioner is entitled to continue upto the age of superannuation of 60 years. Counsel for the petitioner argued that writ petition is maintainable as respondent No.4 though it is a private company, because it is controlled by the respondent No.1 and the respondent No.4 is discharging public duty and, therefore, it is amenable to issuance of writ jurisdiction under Article 226 of the Constitution of India. It is further argued that the order of the respondent No.4 retiring the petitioner on completion of age of 58 years instead of 60 years is in contravention to his right to livelihood which is an integral part of 'right to life' under Article 21 of the Constitution of India. He referred para 88 of the judgment of Kaushal Kishore (supra) in respect of 'right to life' He also referred para 172 of the judgment passed in the case of Zee Telefilms Ltd. (supra). In para 172 it has been held that a writ can be issued against a private body if it acts as a public authority and has a public duty to perform.

5. To appreciate the objection raised by counsel for the State regarding maintainability of the petition against a private company, it is apposite to survey the judgments in this regard on the said point.

6. The Hon'ble Supreme Court in the case of Unni Krishnan reported in AIR 1993 SC 2178 held that private educational institutions discharge public duties irrespective of the fact they receive aid or not. The absence of aid does not detract from the public nature of the duty. These institutions supplement the effort of the State in educating the people which is the principal duty cast upon the State under the constitutional scheme. Relevant excerpt is quoted below:

"83. The emphasis in this case is as to the nature of duty imposed on the body. It requires to be observed that the meaning of authority under Article 226 came to be laid down distinguishing the same term from 11 ----Article 12. In spite of it, if the emphasis is on the nature of duty on the same principle it has to be held that these educational institutions discharge public duties. Irrespective of the educational institutions receiving aid it should be held that it is a public duty. The absence of aid does not detract from the nature of duty."

7. The case of Unni Krishnan came to be partly overruled by the subsequent eleven Judge Bench in T.M.A. Pai Foundation and others Vs. State of Karnataka and others reported in AIR 2003 SC 355, however, the ratio decidendi, in so far educational institution discharging public function and it is the duty of the State

to provide education to children from the age of six to fourteen years held to be fundamental right was affirmed.

8. The Hon'ble Supreme Court again got an opportunity to examine the issue as to whether private institution imparting education in higher studies to students is discharging 'public function' and whether, Deemed University notified by the Central Government under Section 3 of the University Grants Commission Act, 1956 which, inter alia, provides for effective discharge of public function, namely, education for the benefit of public is an authority within the meaning of Article 12 of the Constitution then as a necessary consequence, it becomes amenable to writ jurisdiction of High Court under Article 226 of the Constitution. The Court in the case of Janet Jayapaul Vs. SRM University & Others reported in (2015) 16 SCC 530 held that the institution engaged in/and imparting higher studies to students is discharging 'public function' by imparting education. Relevant excerpt is quoted below:

"This we say for the reasons that firstly, respondent No. 1 is engaged in imparting education in higher studies to students at large. Secondly, it is discharging "public function" by way of imparting education. Thirdly, it is notified as a "Deemed University" by the Central Government under Section 3 of the UGC Act. Fourthly, being a "Deemed University", all the provisions of the UGC Act are made applicable to respondent No. 1, which inter alia provides for effective discharge of the public function - namely education for the benefit of public. Fifthly, once respondent No. 1 is declared as "Deemed University" whose all functions and activities are governed by the UGC Act, alike other universities then it is an "authority" within the meaning of Article 12 of the Constitution. Lastly, once it is held to be an "authority" as provided in Article 12 then as a necessary consequence, it becomes amenable to writ jurisdiction of High Court under Article 226 of the Constitution."

9. Further, the eleven Judge Bench in T.M.A. Pai (supra) while considering the relationship between the management and the employees/teachers of private technical and higher education though being contractual in nature but, in the case of educational institutions, the Court was of the opinion that requiring a teacher or a staff to go to civil court for the purposes of seeking redress is not in the interest of education. The Court held that: (Extract of Para 50):-

"In the case of educational institutions, however, we are of the opinion that requiring a teacher or a member of the staff to go to a civil court for the purpose of seeking redress is not in the interest of general education. Disputes between the management and the staff of educational institutions must be decided speedily, and without the excessive incurring of costs."

10. Thus, from the aforesaid judgments it is clear that writ is maintainable even against a private person or authority if action of such an authority which is challenged is in domain of public law as distinguished from private law. The emphasis is on the nature of duty and if the private person or authority is

discharging a public duty, the writ is maintainable. In the case of Janet Jayapaul (supra) it is held that the institution engaged in/and imparting higher studies to students is discharging 'public function' by imparting education, and, therefore, the same is an authority within the meaning of Article 12. In the case of T.M.A. Pai (supra), the court while

considering the relationship between the management and the employees/teachers of private technical and higher education held that though the relationship is contractual in nature but, in the case of educational institutions, the Court was of the opinion that requiring a teacher or a staff to go to civil court for the purposes of seeking redress is not in the interest of education, and, therefore, the writ petition was held to be maintainable. Relying on the aforesaid judgments, the division bench in WA No.1619/2022 in the case of Laurels School International Vs. Union of India and others held that in a case of termination of a teacher of a private institution, the writ is maintainable because it affects The Right of Children to Free and Compulsory Education Act, 2009 and the Rules framed therein. For denial of any such rights in connection with public duty imposed on such body, public law remedy can be enforced and as the service conditions of the respondents have direct nexus of the discharge of a public duty, their case would be covered under the exception clause, therefore, amenable under Article 226 of the Constitution of India. Against the said order, the review was filed by the school in RP No.602/2023 which has also been dismissed affirming the said view by order dated 1.12.2023. The Apex Court in the recent judgment in the case of St.Mary's Education Society and Ors. Vs.

Rajendra Prasad Bhargava and Ors. (2023) 4 SCC 498 in which it is held that the action impugned before the writ court has no nexus with public element, even though the private body in question may be discharging public functions, the writ jurisdiction cannot be invoked in such a case.

11. In the present petition, the petitioner who was working as a Workman with the respondent No.4 which is a private company and is seeking relief for continuation in service upto 60 years of age cannot be held to be an action relating to public duty of the respondent No.4. The same cannot be held to be a breach of public duty by the respondent No.4. The right to continue in service cannot be held to be a fundamental right. The service conditions of an employee is governed by the Service rules and violation of service rules would not come within the purview of violation of discharge of public functions and, therefore, any action taken by a private institution against his employee would not come within the judicial scrutiny of this Court under Article 226 of the Constitution of India. Thus, it is held that writ petition against a private company challenging the order of premature retirement and claiming to be continued in service is not maintainable.

12. The petition is dismissed as not maintainable.